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ARCHAEOLOGIA:

OR

MISCELLANEOUS TRACTS

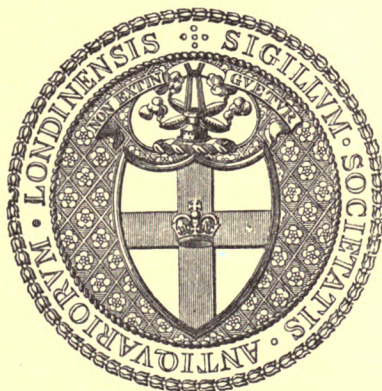
RELATING TO

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# ARCHAEOLOGIA :

OR,

## MISCELLANEOUS TRACTS,

&c.

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- I. *Some details of a Murrain of the Fourteenth Century ; from the Court Rolls of a Norfolk Manor.* By HENRY HARROD, Esq., F.S.A.

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Read February 1, 1866.

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OF the great Murraings of the Middle Ages, we know little or nothing; the statements of the chroniclers about them are so meagre and vague, that we get but few facts except the dates of the years in which they occurred, and even in that particular the Chronicles are not always correct. Under such circumstances, I felt it my duty, when some original information relative to a Murrain in the Fourteenth Century came under my notice, to take some little trouble in selecting and arranging the materials in order to place them before the Society. The additional knowledge of these visitations, thus obtained, may not be considerable, but a number of small facts may be of some service, in elucidating the character and effect of them.

The first Murrain recorded in the Fourteenth Century was a very severe one in 1316, of which Holinshed\* says, "by reason of the Murrain that fell among cattle, beefs and muttons were *unreasonably* priced," a statement which might fairly be repeated in the present day.

The next on record is stated to have occurred in 1348, and to have broken out simultaneously with the Great Pestilence among men; most of the Chroniclers are too full of the more important visitation to say much about the Cattle Plague, and very few particulars of its extent and character are to be gathered.

\* Holinshed, 323.

Knyghton is almost the only one who enters into any details; these are, that it was principally among the sheep; and that in one place more than 5,000 sheep died, and that neither beast nor bird would touch the flesh; and that the fear of it was so great, that cattle were disposed of for very small prices; a horse worth forty shillings for half-a-mark, a fat bullock for four shillings, a cow for twelve shillings, &c., but no one says when it ceased; there is not, so far as I am aware, any notice of it later than 1349.

William of Worcester records, under the date of 1363, that there was at that time a great Murrain of animals; and Grafton, under the year 1369, says there was in that year a third mortality of men, "and likewise a marvellous Murrain upon cattell, so that the like had not been seen in many years before."

Again, Knyghton says that in 1386 there was another Murrain of Cattle.

And here, I think I have pretty well exhausted all the information the chronicles afford.

In looking over some Court Rolls of the Manor of Heacham, in the county of Norfolk, I met with some particulars of the Murrain during the reigns of Edward III., Richard II., and Henry IV., which I have extracted, and by the courtesy of the solicitors of Mr. Le Strange, the present lord, I am permitted to bring them before the society.

The Manor of Heacham was one of the possessions of the Great Priory of St. Pancras at Lewes; and at the time to which I am about to refer, the farm was carried on by a resident bailiff, whose accounts were regularly audited by two of the monks of Lewes, who went over to Heacham every November for that purpose.

The accounts taken were extremely minute and careful, and the particulars of the live stock showed all the additions, sales, and losses of every description during the year ending at Michaelmas. To assist the auditors in testing the accounts of the bailiff, the presentments of the losses by murrain appear to have been made on oath at the Manor Courts; another reason, probably, was to absolve the shepherds, who were bond tenants of the manor, from liability on account of the losses when not happening from want of proper care on their part.

The presentments on the Court Rolls commence in the 21st year of Edward III., 1347, and whatever may have been the case in other parts, in this corner of the kingdom the murrain seems to have continued more or less severely during the rest of the reign of Edward III., during the entire reign of Richard II., and until the 13th year of Henry IV., a period of 63 years.

The bailiffs' accounts for the whole of this period have not been preserved; a



portion of them only remains ; and from this I have gleaned a few particulars to assist in explaining the entries on the rolls.

The stock account for the 33rd year of Edward III. shows that at that time there were upon the farm 12 horses and stots,<sup>a</sup> 53 head of cattle, and 7 calves, 733 sheep, and 140 lambs.

In that of the 18th year of Richard II. there were 10 horses, 46 head of cattle, and 8 calves, 374 sheep, and 70 lambs.

I have been unable to find any later accounts of Richard II. or any of Henry IV.

The great pestilence commenced in London in November, 1348, and the chroniclers generally state that the murrain amongst the cattle commenced at or about the same time, but the first presentment I find about it in the Heacham Court Rolls fixes the commencement of it in that manor in August, 1346, more than two years before.

This presentment, which was at a Court held the Monday after the feast of the Invention of the Cross, in the 21st year of Edward III., is to the following effect :—"De murina, jurati presentant quod unus bos, tres boveculi, unus stottus, unus hurtardus, tres multones, tres oves matrices, et quinque hogastri moriebantur inter Gulam Augusti et diem hujus curiæ casualiter et non ob defectum alicujus custodie. Item quod sex porculi similiter moriebantur in hyeme non ob defectum, &c. Item quod septem porcelli in hyeme similiter, &c."

Little more than another month had elapsed when another Court was held on the Thursday after the feast of St. Barnabas, when the following presentment appears :—"De murina, jurati presentant quod una vacca post vitulacionem circa festum Sancte Trinitatis moriebatur, unus vitulus similiter moriebatur, septem multones ante tonsionem, novem oves matrices ante tonsionem et agnelacionem, novem hogastri ante tonsionem, et triginti et sex agni et octo porculi similiter non ob defectum, &c."

But it is not my intention to place the whole mass of these presentments before you. I have appended a number of them sufficient to show the character of them to this paper,<sup>b</sup> and will now merely state that during the 21st year of Edward III.

<sup>a</sup> I have treated the animals described "stots" as horses—not because I believe them to be so in every case where the word is used, but because the Stock Accounts of this Manor clearly designate the horses so.

<sup>b</sup> These extracts include the whole of the entries of murrain for the 21st and 39th Years of Edward III., the 11th and 22nd of Richard II., and the 8th and 9th of Henry IV. It is as well, however, that I should state that every presentment on the Rolls relating to murrain was extracted, and remains in my possession, so that the figures of the general statement can be tested at any time.

there appears to have died on this farm 1 horse, 7 bullocks, 2 cows, a calf, 48 sheep and 36 lambs, 3 sows, and 43 pigs.

In the 22nd year, 1 horse, 5 bullocks, a cow, 3 calves, 60 sheep, and 40 lambs.

In the 23rd year, the year of the pestilence, there is but one presentment, recording the death of 11 ewes and 6 pigs.

In the following year but a single death, that of a ewe, and in the 25th year nothing whatever, and it might fairly be supposed to have ended.<sup>a</sup> In the 26th year it begins again, commits more havoc in the 27th year, but less again in the 28th, and the 29th year is again a blank; once more it is rife in the 30th; and in the 31st, 129 sheep and 96 lambs are on the death roll; it has again nearly spent itself in the 35th year, but deaths by it continue in each successive year; and in the 39th the numbers rise again to 152 sheep and 190 lambs. In the 11th year of Richard II. 143 sheep and 113 lambs died.

During all this time other cattle suffered, but not at all in like proportion to the sheep.

The effect of its ravages will be better understood by the statement I have carefully prepared from the presentments, which shows the total of deaths of each kind of stock in every year during the continuance of the murrain. It will be seen from it that so late as the 8th year of Henry IV., 8 bullocks, 13 cows, and 66 sheep died, and the account closes in the 13th year with a sow and 3 pigs.

It will be seen, too, from this account, that among the sheep, the lambs, ewes, and hoggets were most affected by it, and the calves and cows more in proportion than the other stock. Occasionally, too, the swans and peacocks died from it; a few geese and capons are recorded, but other poultry are scarcely once mentioned.<sup>b</sup>

The peacocks were much valued on account of their wings, which frequently figure in the accounts, fetching eightpence a pair, the value of a couple of geese, and very nearly the value of a sheep.

The swans, too, were in much esteem, and great care taken in their preservation. In the Lewes Chartulary in the British Museum is a copy of an indenture of

<sup>a</sup> The Rolls for this year and the 29th are not complete; and, since the above was written, a small fragment of one of this year, with the remains of a murrain entry on it, has been found, but too much decayed to make out anything but the marginal note.

<sup>b</sup> Where the loss has arisen from other causes, and has been accidentally included in the murrain account, the cause of the loss is inserted. In the 42nd Edward III. "*Item octo hyves apum*," is immediately followed by "*per tempestatem yemis*."



the 24th of Edward III., between the Prior and Simon Baret of Heacham, reciting that, on a piece of water there, a pair of swans had their nests in the reeds at the north end, and another pair on a cart wheel in the middle of the water, and it was determined that the progeny of these swans were to be divided between the Prior and Baret equally.

In the bailiff's accounts, too, payments appear for constructing the swans' nests in the same water.

But perhaps the most curious fact appearing in these extracts, is that the murrain affected the bees. I began to suspect, when the first few entries of hives of bees fell under my notice, that losses from other causes than murrain were mixed up in these presentments; but two of the 45th year of Edward III. put the matter at rest, as they expressly state that so many "*ruscæ apium sunt in morinâ.*" As many as ten hives were lost in that year, and there was some loss in the apiary nearly every year for twenty years.

The details given in the presentments are very minute as to the period of the death of the animals; it being stated, not only that so many ewes, so many hoggets, so many lambs, &c., had died, but also whether before or after shearing, and in the case of ewes whether before or after lambing. For this latter, the word "*fenatio*" is, except in a few of the early entries, made use of nearly throughout; "*una oves matrix ante fē et ton̄,*" is the common mode of recording it. In the early entries, too, it is stated whether the carcass and skin were of any or no value. In some cases they were declared to be so, and by the accounts it appears some were sold; many, indeed, of the skins; but the prices realised were very small.

The first presentments I have called attention to were made by the jury or homage of the court, on the Thursday after St. Martin, in the 21st of Edward III. The presentment is made by the *coroners*, and so it continues down to the 26th year, when the homage and coroners jointly make it; and on the Wednesday before the feast of St. Thomas the Apostle of that year the entry is "*Humagium et Coronatores presentant quod Dominus habet in murina viginti et septem hoggastros,*" &c.

After this for some years the entry simply states the fact that the Lord had in murrain such and such cattle, without expressly stating by whom such presentment was made. In the 46th year of Edward III. new officers appear on the scene. At the court on Monday after the Purification the presentment is made by the bailiff, sub-bailiff, and cadaverators, but during the rest of the reign as before. In the first of Richard II., at the court on Monday before St. Wynwaloc

the Abbot, the presentment is made by the whole homage with the *cadaverators*, and by these latter many of the subsequent presentments are made.

I presume these officers had the charge of the disposal of the carcases of the cattle dying of murrain, and I occasionally met with their election by the homage of the courts, as on the Tuesday after St. Valentine 7th Richard II.—“They elect John Barnege and Geffrey Cay into the office of cadaverators, who say, &c.,” and again in the course of the following year—“They elect John Baronne and Geffrey Cay into that office, and they are sworn, &c.”

They continue to take an active part in the proceedings until the termination of the visitation.

It may be asked whether anything appears to have been done to endeavour to stay the progress of the disease by medicine? And to this I can give no very satisfactory reply, as so few of the bailiff's accounts exist. The entries on the Court Rolls being made for a particular purpose having no relation to that matter, it was hardly to be expected that any information on this point could be gleaned from them. But once in the course of the whole affair does he who holds so important a place for good or for evil in the present visitation appear, and that for no curative purpose; but once only, and that in the 34th of Edward the III., have we any allusion to the “*Veterinarius*.” Eight sheep dead of the murrain “*vendebantur per visum veterinarii*.” It may be that he was on the spot endeavouring to effect cures, and so came to be called in to pass an opinion on the propriety of selling the diseased mutton. Only one entry do I find on the bailiff's accounts of an attempt at cure; this is in the expenses of the 17th Richard II., when 12*d.* was paid according to agreement to a certain smith of Anmer (a village a few miles distant from Heacham), coming twice to Heacham to physie a stott, and as I find a stott died that year, I fear we must conclude that physie then, as now, was of little avail.

I can hardly take upon me to say whether some entries in the stock accounts of the 47th and 48th years of Edward III. point at efforts at cure in another direction or not. I should at least mention that in the stock accounts for those years (and at no other period) I find that one lamb in each year was disposed of “*in dono domini ad honorem Sancti Antonii*.”

From the two bailiff's accounts I have before referred to, the 33rd Edward III. and the 18th Richard II., it will seem that the stock on the farm had considerably diminished, the sheep in the latter account amounting to only about half the number mentioned in the former. The purchases of stock were less on some occasions, the lambs much less numerous, and many ewes are stated to have



been sterile; and I also observe such entries as, that a dozen very sickly hoggets were sold "*pro timore morinæ*." These particular ones were sold at  $3\frac{1}{4}d.$  a head, the current price at that time being  $17d.$  If they were (as it seems likely they were) affected with the disease, it was a ready way of spreading it.

I trust I have sufficiently shown, without troubling you with a mass of extracts, (of which those in Appendix B are not a twentieth part,) that the murrain mentioned to have occurred in 1348, and those of 1363 and 1369, were really one continuous visitation.

It is quite certain, that on this one farm in the western part of the county of Norfolk it commenced in 1346, and continued rising and falling in intensity, until it almost suddenly ceased in November 1411. So accustomed had people become to it by the 44th Edward III., that it is spoken of as the "common murrain," and although it does not appear to have swept off the entire flock, as in the case mentioned by Knyghton, the aggregate loss is very large, and if the numbers lost on other farms bore any proportion to these, the effect in such a county as Norfolk must have been very serious.

It is right I should mention, that, although many of the Heacham Court Rolls are much injured from damp and decay, I believe but a very few are missing during these 63 years; and that, if all were recovered and legible, there would be very little difference in the results I have placed before you.

I have found similar presentments in rolls of an adjoining manor, but these unfortunately have suffered greatly from damp and ill-usage, and in many cases to open them is to destroy them. Nor could I expect the inspection to repay the trouble, for there did not exist the same state of affairs as rendered it necessary at Heacham to record the ravages of the disease.

I do not flatter myself that I have made any very large or very useful addition to our knowledge about murrains, but it seemed to me a curious account of what a single farm suffered by one; and, by thus bringing it before the Society, I may stimulate others to look into the Court Rolls of more important manors, when information of greater value may be brought to light.





## APPENDIX A—continued.

## FARM AT HEACHAM FROM 21ST EDWARD III. TO 13TH HENRY IV.

Denominations of Stock.	RICHARD II.																	
	4th	5th	6th	7th	8th	9th	10th	11th	12th	13th	14th	15h	16th	17th	18th	19th		
Horses and Stots .....	—	4	—	1	3	—	—	1	—	—	—	1	1	1	1	—		
Bulls .....	—	—	—	—	1	—	—	—	—	—	—	—	—	—	—	—		
Bullocks, &c. ....	4	4	5	—	5	—	1	4	2	2	2	4	—	—	1	1		
Cows .....	2	—	1	—	1	—	1	—	—	—	—	1	—	—	1	—		
Calves .....	1	2	1	—	1	—	2	2	—	3	3	—	—	—	—	—		
Sheep .....	7	23	10	16	24	6	4	10	9	10	3	5	8	9	8	3		
Rams .....	—	—	—	—	1	—	1	1	—	—	—	—	—	2	3	—		
Ewes .....	14	9	20	5	26	9	6	63	36	42	14	24	9	9	6	10		
Hoggets.....	15	17	6	—	31	6	16	69	8	14	10	19	35	41	19	9		
Total of Sheep .....	36	49	36	21	82	21	27	143	53	66	27	48	52	61	36	22		
Lambs .....	87	4	11	14	48	23	28	113	35	38	14	—	25	5	15	3		
Boars .....	—	—	1	—	—	—	—	—	—	—	—	—	—	1	1	1		
Sows .....	1	2	4	2	1	2	2	1	—	1	1	1	2	3	1	2		
Pigs .....	4	13	3	—	—	2	—	—	7	—	12	—	—	5	2	3		
Young Pigs .....	39	18	12	3	3	20	17	5	3	—	1	7	8	19	16	36		
Swans .....	—	—	—	—	1	1	—	—	—	—	—	—	—	—	1	—		
Peacocks .....	—	—	—	1	—	1	1	2	—	3	1	—	4	1	1	—		
Peahens .....	—	—	—	—	—	—	2	1	—	5	—	—	5	—	—	2		
Capons .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—		
Cocks .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—		
Hens .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—		
Hives of Bees .....	3	3	2	—	2	—	1	—	—	—	—	—	—	—	—	—		
Geese .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—		

Denominations of Stock.	RICHARD II.					HENRY IV.												
	20th	21st	22nd	23rd	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th	13th		
Horses and Stots .....	—	—	1	1	—	—	—	—	—	—	—	—	—	—	—	—		
Bulls .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—		
Bullocks, &c. ....	1	—	—	—	—	—	1	—	—	1	8	—	—	—	—	—		
Cows .....	—	2	—	1	—	—	—	—	—	—	13	2	—	—	—	—		
Calves .....	1	—	3	—	—	—	2	—	—	3	3	2	4	4	4	—		
Sheep .....	44	9	16	26	14	2	9	5	—	19	10	12	10	5	—	—		
Rams .....	2	1	2	—	2	—	—	—	—	—	—	4	—	1	—	—		
Ewes .....	22	12	47	42	28	—	25	6	—	22	27	37	25	16	1	—		
Hoggets .....	42	31	60	31	50	—	57	10	—	38	29	25	25	4	3	—		
Total of Sheep .....	110	53	125	99	94	2	91	21	—	79	66	78	60	26	4	—		
Lambs .....	24	13	26	22	27	3	7	16	—	5	6	11	—	—	—	—		
Boars .....	—	1	—	—	2	—	1	1	—	1	—	1	—	—	—	—		
Sows .....	2	3	1	1	3	—	3	1	—	1	4	5	—	—	3	1		
Pigs .....	18	—	—	11	7	—	3	—	—	2	10	5	6	—	—	—		
Young Pigs .....	10	24	9	19	8	—	17	2	—	16	4	34	22	24	5	3		
Swans .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—		
Peacocks .....	—	1	—	2	—	1	1	—	—	2	—	—	—	1	—	—		
Peahens .....	—	2	2	1	1	—	—	1	—	—	—	—	—	—	—	—		
Capons .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—		
Cocks .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—		
Hens .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—		
Hives of Bees .....	—	1	2	—	1	—	—	3	—	—	—	—	—	—	—	—		
Geese .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—		

## APPENDIX B.

## EXTRACTS FROM THE COURT ROLLS.

HECHAM.—Anno Regni Regis Edwardi Tercii post Conquestum xxjº.

Curia ibidem tenta die Lune proxima post festum Invencionis S. Crucis anno supradicto.

*De murina.* Jurati presentant quod unus bos, iij. boviculi, j. stottus, unus hurtardus, iij. multones, iiij. oves matrices, & v. hoggastri moriebantur intra Gulam Augusti & diem huius curie casualiter & non ob defectum alicujus custodie. Item quod vj. porculi similiter moriebantur in yeme non ob defectum &c. Item quod vij. porcelli in yeme similiter.

Curia [&c.] die Jovis proxima post festum Sancti Barnabe Apostoli, anno [&c.] xxjº.

*De murina.* Jurati presentant quod j. vacca post vitulacionem circa festum Sancte Trinitatis moriebatur, j. vitulus similiter moriebatur, vij. multones ante tonsionem, ix. oves matrices ante tonsionem & agnelacionem, ix. hoggastri ante tonsionem, & xxxvj. agni & viij. porculi similiter non ob defectum, &c.

Curia [&c.] die Jovis proxima post festum Sancti Martini Episcopi, anno supradicto.

*Murina.* Coronatores presentant quod j. vacca in murina in autumpno ante vitulacionem. Item iij. juvencule in autumpno. Item ij. hurtardi ante festum Sancti Martini. Item vj. porci ante festum Omnium Sanctorum. Item xij. porculi ante festum Sancte Fidei Virginis, non ob defectum custodie sed de fortuna.

Curia [&c.] die Jovis proxima post festum Sancti Hillarii, anno xxjº.

*Murina.* Coronatores presentant quod viij. oves matrices moriebantur ante tonsionem. Item iij. sues ante Natale & iiij. porci non ob defectum custodie sed de fortuna.

Curia [&c.] die Lune proxima ante festum Sancte Margarete, anno [&c.] xxijº.

*Murina.* Coronatores presentant quod j. stotte vocatus Pontewe ante festum Nativitatis Sancti Johannis Baptiste, iij. vituli lactantes in estate. Item j. multo post tonsionem. Item iij. hoggastri post tonsionem.

Curia [&c.] die Jovis proxima post festum Apostolorum Simonis & Jude, anno [&c.] xxijº.

*Murina.* Coronatores presentant quod xxiiij. hoggastri in murina non ob defectum custodie sed casualiter.

Curia [&c.] die Martis in vigilia Sancti Jacobi, anno [&c.] xxvjº.

*Murina.* Humagium et coronatores presentant quod habentur in murina ij. sues, ij. porcelli, iij. anceri, et iij. kapones.

Curia [&c.] . . . ante festum Sancte Margarete, anno [&c.] xxvijº.

*Murina.* Dominus habet in murina unum boviculum etatis unius anni, unam vaccam ante vitulacionem, unum equum . . . unum porcum die ante curiam istam, ij. porcellos, xj. agnos post



signacionem, et respondent d[omino de] pellibus, & carcasea nullius valoris per testimonium coronatorum. Item j. ovis post agnellacionem & ante tonsionem, unam pellem et carcesia vendebantur pro iiij.d., et j. hogastram feminam post tonsionem.

Curia [&c.] die Mercurii ante festum Sancte Margarete, anno [&c.] xxxj°.

*Murina.* Dominus habet in murina xx. hogastros masculos. Item xxij. hogastras feminas. Item iiij. porculos. Item j. sus. Item iij. oves matrices. Item xij. porcellos. Item j. ancerem masculum. Item alium ancerem masculum. Item, unum hurtardum. Item ij. motones. Item iiij<sup>xx</sup> & xvj. agni. Item ij. ruschas apium.

Curia [&c.] die Mercurii ante festum Annunciationis beate Marie Virginis, anno [&c.] xxxij°.

*Murina.* Dominus habet in murina x. multones, quorum carcesia ij. vendebantur xj.d. Item xij. oves matrices. Item xv. hogastros. Item j. porculum, ij. porcellos. [Item j. rusca apium sine murrina vendebatur ij.s. v.d.]

Curia [&c.] die Jovis in Cena Domini, anno xxxij°.

*Morina.* Dominus habet in murina x. multones, viij. oves matrices, lj. hogastros, et xxij. agni.

Curia [&c.] die Lune proxima post festum Sancti Mathie Apostoli, anno [&c.] xxxiiij°.

*Morina.* Dominus habet in morina ij. oves matrices ante fenacionem, octo multones, et vendebantur per visum veterinarii. Item vij. hogastros. [Item ij. stottes per molte zelonge.] Item j. vitulum. quorum ob iij. multones vendebantur pro xvij.d. et carcesium j. multonis vendebatur viij.d., et carcesium j. vituli vendebatur pro vj.d.

Curia [&c.] die Lune proxima post festum Sancti Hillarii, anno xxxvij°.

*Murina.* In morina iij. multones, quorum ij. cum pellibus vendebantur pro xx.d., iij. oves que vendebantur cum pellibus pro iiij.s. iiij.d. Item ij. oves pro iij.s. Item una ovis pro viij.d. Item ij. oves, j. vendebatur pro iiij.d. Et est predicta morina omnium ovium predictarum ante feonacionem. Item j. hogastrus . . . Item ij. signeti, unus mactabatur cum canibus apud Bradwater, et alius pendet in manerio.

Curia [&c.] die Sabbati proxima post festum Sancti Barnabe Apostoli, anno xxxviii°.

*Morina.* Presentant quod in murina vj. oves matrices . . . Item viij. multones. Item v. hoggastru. Item j. equus, pellis vendebatur pro x.d. Item j. vitulus, pellis vendebatur pro vj.d.

Curia [&c.] die . . . . . anno xxxix°.

In murina ij. multones. Item j. porculus et ij. porcelli et iiij. agni.

Curia [&c.] die Lune in crastino Exaltacionis Sancte Crucis anno [&c.] xxxix°.

Unus aries, iij. oves matrices, ij. agnelli, iij. porcelli.

Curia [&c.] die Mercurii proxima post festum Sancti Augustini, anno [&c.] xxxix°.

*Murina.* In murina v. multones . . . iij. oves matrices. Item viij. hoggastru. Item xlvij. agni in murina.

Curia [&c.] die Jovis proxima post festum Purificacionis beate Marie Virginis, anno [&c.] xxxix°.

*Murina.* In murinis j. stottus, ij. multones, lvij. hoggastru, et j. porcellus, iij. singni.

Curia [&c.] die Jovis proxima ante Dominicam in Ramis Palmarum, anno [&c.] xxxix<sup>o</sup>.

*Murina.* In murina x multones . . . v. oves matrices . . . Item xlij. hoggastros. Item ij. singnos . . . Item j. porcellum etatis viij. septimanarum.

Curia [&c.] die Mercurii proxima post festum Omnium Sanctorum, anno xxxix<sup>o</sup>.

*Murina.* iij. vituli . . . 1 aper, 1 porcus . . . Item iij. multones, iij. cigni. Item ij. hoggastri ante tonsionem.

Curia [&c.] in Vigilia Epiphanie, anno [&c.] xxxix<sup>o</sup>.

*Murina.* In murina j. ovis ante agnelacionem, i. hurtardus, viij. hogastri, vij. porcelli, ij. cigni.

Curia [&c.] die Sabati proxima post festum Sancti Valentini, anno [&c.] xliij<sup>o</sup>.

*Morina.* Jurati presentant quod ij. cigni errarii et unus signottus sunt in morina de communi morina in hac parte et non per alicujus defectum. Et quod j. juvencula, v. porcelli, ij. oves matrices, iij. hoggastri, et j. multo, iij. rusce apium moriebantur casualiter et non per alicujus defectum.

Curia [&c.] die Veneris in Septimana Pasche, anno [&c.] xliij<sup>o</sup>.

*Morina.* Jurati presentant quod j. juvenca, ij. juvencule, j. multo, lvj. oves matrices, xlij. hoggastri sunt in morina et non per defectum [&c.].

Curia [&c.] die Sabati proxima post festum Corporis Christi, anno xliij<sup>o</sup>.

*Morina.* Item presentant quod xvj. multones, vj. oves matrices, ij. hoggastri, ciiij<sup>xv</sup>. agni ante signacionem, iij. agni post signacionem, et ij. vituli sunt in morina & non per defectum, &c.

Curia die Sabati proxima post festum Purificationis beate Marie Virginis, anno [&c.] xlv<sup>o</sup>.

*Morina.* Jurati presentant quod j. vitulus, j. multo, ij. oves matrices, ij. hoggastri, et j. porcellus . . . sunt in morina, et quod apes, quatuor rusce sunt in morina, et non ob defectum custodie.

Curia [&c.] die Jovis proxima ante festum Sancti Nicholai Episcopi, anno [&c.] xlv<sup>o</sup>.

*Morina.* Jurati presentant quod j. hurtardus, ij. oves matrices, j. hoggastrus, j. boviculus, & vj. rusce apium sunt in morina et non per defectum custodie.

Curia [&c.] die Lune proxima post festum Purificacionis beate Marie Virginis, anno [&c.] xlvj<sup>o</sup>.

*Morina.* Testatum est per ballivos prepositum et cadaveratores, quod j. aper, ij. porcelli, ij. oves matrices et ij. hoggastri sunt in morina, &c.

Curia [&c.] die Lune proxima post festum Sancti Wynewaloci Abbatis, anno [&c.] Ricardi primo.

*Morina.* Totum homagium cum cadaveratoribus presentant quod vij. ante tonsionem multones moriebantur mense Januarii, v. oves matrices ante fenacionem et tonsionem eodem mense, j. hurtardus, xij. hoggastri, j. boviculus mas, ij. porci, vj. porcelli, j. signus . . . moriebantur casualiter et non ob defectum alicujus custodie. Item in morina j. rusker apium.

Curia [&c.] die Lune in crastino Sancti Jacobi Apostoli, anno [&c.] octavo.

*Morina.* Item eliguntur Johannes Baronne et Galfridus Kaye in officia cadaveratorum et jurati sunt. Et presentant quod j. multo ante tonsionem, j. hurtardus ante tonsionem, ij. hoggastri ante



tonsonem, xv. agni post tempus signacionis, j. signus, moriebantur casualiter et non per defectum custodie.

Curia [&c.] die Lune proxima post festum Sancte Lucie Virginis anno [&c.] Ricardi undecimo.

*Morina.* Cadaveratores presentant quod unus hurtardus, iij. multones, x. oves matrices, xij. hoggastri, una juvenca, ij. boviculi, moriebantur casualiter et non per defectum custodie.

Curia [&c.] die Jovis proxima post festum Sancti Gregorii Pape anno [&c.] xj<sup>o</sup>.

*Morina.* Cadaveratores presentant quod xxxv. oves matrices post fenacionem et ante tonsionem, et lvij. hoggastri, c agni ante tempus signacionis moriebantur casualiter et non per defectum custodie. Item j. equus, j. boviculus, ij. porcelli, ij. pavones, j. pava, moriebantur ut supra.

Curia [&c.] die Mercurii in festo Sancte Marie Magdalene, anno [&c.] xj<sup>o</sup>.

*Morina.* Item quod iiij. multones, xiiij. oves matrices, ij. agni, moriebantur casualiter, et non per defectum custodie.

Curia [&c.] die Dominica in Crastino Exaltacionis Sancte Crucis anno [&c.] xj<sup>o</sup>.

*Morina.* Cadaveratores presentant quod ij. vituli, j. sus, iiij. porcelli, iij. multones, iiij. oves matrices, xj. agni post tempus signacionis moriebantur casualiter et non per defectum custodie.

Curia [&c.] die Veneris in Crastino Exaltacionis [&c.] anno xv<sup>o</sup>.

*Morina.* Cadaveratores presentant quod ij. porcelli, j. juvenca, unde cadaver vendebatur pro iiij.s., moriebantur casualiter et non per defectum custodie.

Curia [&c.] die Martis in crastino Nativitatis Sancti Johannis Baptiste anno [&c.] xxij<sup>o</sup>.

Jurati presentant quod dominus habet in morina xxvj. hoggastros ante tonsionem, xij. oves post fenacionem et ante tonsionem, ij. hurtardos ante tonsionem, iij. vitulos de exitu anni precedentis, j. stottum, iij. porcellos, ij. rucas apium, j. pavam, iij. agnos post signacionem, j. hoggastrum post tonsionem qui moriebantur casualiter et non ob defectum custodie.

Curia [&c.] die Dominica proxima post festum Exaltacionis [&c.] anno xxij<sup>o</sup>.

Jurati ex officio curiæ presentant quod dominus habet in morina vj. multones, iiij. oves, iij. agnos, j. sus, j. porcellum, j. pavam qui moriebantur casualiter et non ob defectum custodie.

Curia [&c.] die Jovis proxima post festum Sancti Gregorii Pape, anno [&c.] xxij<sup>o</sup>.

*Morina.* Jurati presentant quod dominus habet in morina viij. multones, xxviij. oves matrices ante fenacionem et tonsionem, xxxj. hoggastros, xx. agnos de exitu hujus anni ante signacionem, iiij. porcellos, qui moriebantur casualiter et non ob defectum custodie.

Curia [&c.] die Jovis proxima post festum Edmundi Regis, anno [&c.] xxij<sup>o</sup>.

*Morina.* Item presentant quod dominus habet in morina ii. multones ante tonsionem, iij. oves matrices ante tonsionem, ij. hoggastros, j. porcellum qui moriebantur casualiter et non ob defectum custodie.

Curia [&c.] die Jovis proxima post festum Natali Domini anno regni regis Henrici IV. viij<sup>o</sup>.

*Morina.* Cadaveratores presentant quod dominus habet in morina viij. porcos, ij. sues, iiij<sup>or</sup> mul-

tones, unde ij. vendebantur pro xx.d., xj. hoggastros, ij. oves matrices unde cadaver unius vendebatur pro vjd. moriebantur casualiter et non ob defectum custodie.

Curia [&c.] die Martis in festo Inventionis Sancte Crucis, anno [&c.] Henrici IV. viij<sup>o</sup>.

*Morina.* Cadaveratores presentant quod dominus habet in morina j. bove . . . j. juvencam, ij. boviculos, ij. juvenculas, j. porcum, iiij. porcellos, v. multones ante tonsionem, xix. oves ante fenacionem et tonsionem, xvij. hoggastros ante tonsionem qui moriebantur [&c.]

Curia [&c.] die Mercurii proxima post festum Sancti Jacobi Apostoli, anno [&c.] viij<sup>o</sup>.

*Morina.* Cadaveratores [&c.] x. vaccas post vitulacionem, j. boviculum, iiij. vitulos post signacionem, j. juvenculam, j. ovem post tonsionem, iiij. agnos post signacionem unde cadaver unius vendebatur pro ij.d., j. porcum qui moriebantur [&c.]

Curia [&c.] die Jovis in Crastino Exaltacionis Sancte Crucis, anno [&c.] viij<sup>o</sup>.

*Morina.* Cadaveratores presentant [&c.] iiij. vaccas post vitulacionem, ij. sues, j. multonem cujus cadaver vendebatur pro vjd. sine vellere, v. oves post fenacionem et tonsionem, j. cadaver vendebatur pro v.d. sine vellere, iiij. agnos post signacionem qui moriebantur [&c.]

Curia [&c.] die Jovis in crastino Sancti Andree Apostoli, anno [&c.] ix<sup>o</sup>.

*Morina.* Cadaveratores [&c.] unam vaccam ante vitulacionem, j. sus, ij. porcellos, j. ovem ante fenacionem et tonsionem, j. hoggastrum qui moriebantur [&c.]

Curia [&c.] die Jovis proxima ante festum Ascencionis, anno [&c.] ix<sup>o</sup>.

*Morina.* Cadaveratores [&c.] j. vaccam ante vitulacionem, j. aprem, iiij. sues, iiij. porcos, xxviij. porcellos, j. hurtardum, xij. multones ante tonsionem, xxviij. oves ante fenacionem et tonsionem, xvj. hoggastros ante tonsionem, qui moriebantur [&c.]

Curia [&c.] die Jovis in vigilia Sancti Laurentii Martini, anno [&c.] ix<sup>o</sup>.

*Morina.* Cadaveratores presentant [&c.] j. equus, ij. vituli, iiij. hurtardi, ix. oves ante fenacionem et tonsionem, viij. hoggastri, xj. agni post signacionem, j. sus, j. porcus, iiij. porcelli moriebantur [&c.]

Curia [&c.] die Jovis proxima ante festum Sancti Thome Apostoli, anno [&c.] xj<sup>o</sup>.

*Morina.* Item presentant quod Thomas Blome et Willelmus Wyggenhale electi sunt in officia cadaveratorum hoc anno. Et jurati sunt ad faciendum dictum officium hoc anno. Cadaveratores presentant quod j. ovis matrix, j. hoggastrus, j. equus, ij. vituli super anniati, iiij. porcelli, et ix. porculi sunt in morina casualiter [&c.]

There are no presentments for several courts before the following, which is the last:—

Curia [&c.] die Jovis proxima ante festum Sancti Edmundi Regis, anno regni regis Henrici IV. xiiij<sup>o</sup>.

Cadaveratores presentant morina j. suem et iiij. porculos nullius defectu hominis [&c.]



II.—*The Authenticity of the Paston Letters.* By JOHN BRUCE, Esq., F.S.A.

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Read November 30th, 1865.

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THE doubts which have lately been thrown upon the authenticity of the Paston Letters form a peculiarly appropriate subject for the consideration of the Society of Antiquaries, not merely because historical and antiquarian literature would suffer a grievous loss if the reasonableness of those doubts could be established, but more especially because in the process of their establishment some blame must necessarily fall upon this Society, for having at the time of the original publication allowed itself almost to put the seal of the Society to the genuineness of these important papers.

At the request of our energetic and excellent Secretary, I am about to offer some remarks on this subject; but at the very threshold of my observations I beg to express the great respect which I entertain for the gentleman on whose objections I am about to comment. No one in this society could desire to treat otherwise than with the utmost courtesy, a son of a fellow, who in his own day was so highly esteemed among us as the late John Herman Merivale; nor is the present objector entitled to less consideration on his own account, as the author of historical and critical essays, and other literary productions, of the highest merit. I trust that, whilst commenting with the necessary freedom of historical inquiry, on the objections he has thrown out, I may be able to avoid any expressions which may be personally disagreeable to him.

The case we are about to investigate is not one in which a specific offence is openly charged against a particular individual, and endeavoured to be brought home to him by proper evidence. It would be far more easy to deal with, if that were so. It is simply a statement of a succession of suspicions which have arisen in the mind of an acute inquirer when considering the Paston Letters. Suspicions founded upon the conduct of the editor, suspicions suggested by the silence of this Society, suspicions prompted by the disappearance of the original documents, suspicions derived from the general character of the letters themselves, and from some supposed anachronisms in language and manners which have been thought to be detected in them. The end to which these suspicions point is the destruction of

the credit of these invaluable Letters, by producing a belief that they have been seriously tampered with—probably by the editor. I am of opinion that these suspicions have all been generated by the imperfect way in which the subject has been considered, and I shall endeavour to meet them by setting before you what I believe to be the actual facts.

Without entering into any detailed history of the family from which these Letters derive their name, it is necessary that we should fix in our minds the succession, and form some idea of the position in the world, of three or four of the leading members of the family during the fifteenth century. The Pastons were originally seated near a village of the same name, situate on that part of the coast of Norfolk which verges round from east to north. Paston lies somewhere about seven miles to the southward of Cromer, and not very far from midway between the little watering place of Mundesley, on the north, and Happisburgh, infamous for shipwrecks, on the south. In this bleak and secluded spot, the Pastons were fixed for several centuries; and there still remain traces of Paston Hall, their place of residence, with its adjoining offices and chapel; clear evidences of the social station and local importance of the family. At the commencement of the fifteenth century, William Paston, the head of the family, was a practising barrister, who kept the numerous manorial courts of the see of Norwich, and whose name frequently figures in the Year Books. In 1426 he was called to the degree of sergeant-at-law, and three years afterwards obtained a seat on the bench of the Court of Common Pleas, with some extra allowances, both of salary and robes, in token of the special favour of the advisers of the sovereign, King Henry VI. Sir William Paston—for he was knighted about the time of his appointment as judge—retained his offices and emoluments until his death, in 1444, at the age of 66. Finally, this honourable magistrate was interred in the Lady Chapel of Norwich Cathedral; obtained a place among the worthies of his native county, enumerated by Fuller; and filled a niche in another work of the same author, as the model and example of a good judge.

Sir William Paston left surviving a widow, Agnes, daughter and co-heir of Sir Edmund Barry, of Harlingbury Hall, in Therfield, Hertfordshire, and a family of four sons and one daughter, the eldest son being named John.

Among the latest actions of Sir William Paston were the introduction of his son John Paston, of the Inner Temple, to his own profession, and the marriage of the young lawyer to Margaret Mawteby, heiress of an old Norfolk family. Both the Judge's own wife, and the lady selected for his son, brought considerable additions of property to the Pastons; and we find them after the middle of the



fifteenth century possessed, in addition to Paston Hall, of residences at Mawteby and Oxnead, the latter an inland parish, about ten miles west of Paston, besides a town residence in the local capital Norwich.

John Paston, the son of the Judge, had neither the good fortune nor the length of days of his father. His practice in his profession was considerable; and he executed several important offices, among them that of acting executor to the celebrated Sir John Fastolf; but the times were dangerous; the house of York dispossessed that of Lancaster; John Paston fell under the suspicion of Edward IV.; his estates were sequestered; he himself was sent to the Fleet, and his death soon after followed, in the year 1466, and at the age of 46. The heiress of Mawteby survived him, with a family of six sons and two daughters. The eldest son, and also the second, were both named John. The former, distinguished as Sir John the Knight, recovered his father's estates, and was a gallant soldier in a turbulent period. He died in 1479, at the age of about 40, a bachelor, and was succeeded by his brother, John, the younger, or, as he was sometimes called, John of Galdeston, who carried the family history down to the close of the fifteenth century. John the younger married, in the lifetime of his brother, Margery, daughter of Sir Thomas Brews, a Norfolk knight, and their only surviving son became another Sir William Paston, and an eminent lawyer in the reign of Henry VIII.

It will be seen from this brief outline of the family history, which has been drawn from sources altogether independent of the letters now in question, that during the course of the fifteenth century, the succession of the family comprised Sir William Paston, the judge, and three successive Johns, a son and two grandsons of the judge, who all followed one another as heirs-at-law, inheriting the lands, and much of the other property of the family, on the deaths of their respective predecessors.

Of these three Johns, the second, it has been stated, was never married, and the wives of Sir William and the other two Johns, were named Agnes, Margaret and Margery.

Such was, in brief, the knowledge which inquirers possessed of the Pastons of the fifteenth century, until the year 1787. Their line of descent was easily traceable, their pedigree was filled with real names; but of the men and women Pastons, of their characters and feelings, their manners and way of life, of any thing in short, which could distinguish them from the multitudes of other names which figure in the useful tables of the genealogists, with the single and comparatively slight exception of the Judge, there could scarcely be said to exist a trace. In the year that I have last mentioned, there was given to the world by John Fenn, of East Dereham, a

Fellow of this Society, the first two volumes of the work which is now to be considered ;—a work which threw more light upon all these subjects, than had been done with respect to almost any other family in the kingdom, by any merely literary publication. In the plays of our great dramatist, some of the contemporaries and friends of the Pastons stand forth in their habits and manners as they lived, and are fixed in the popular mind with such mental and moral qualities as the poet chose to attribute to them, but in the publication now under consideration, the Pastons delineated themselves in a series of their own original letters, and allowed us, in the words of Mr. Charles Knight, to become intimate with all their domestic concerns, their wooings, their marriages, their household economics, their interests in public affairs, their intriguing at elections, their law-suits, and in one word, in all the ordinary relations of the life of English people in the fifteenth century. The general nature of these Letters, cannot be better described than it has been by Mr. Merivale. “It embraced,” he observes, “all manner of subjects, precisely as the analogous remains of a worshipful family of the present day would do,” . . . with the addition of “public documents of considerable and varied interest.”

The Editor of this publication was slow to learn the value of the book he was about to give to the world. He thought it necessary to set off his volumes with coloured pictorial illustrations derived from other sources, secured for it the advantage of dedication to His Majesty George III., “the avowed patron” of the antiquities of these kingdoms; and by way of excuse for the price of his book, assured his readers that if he could but be paid by its sale “for his trouble and expenses attending the publication, he should be satisfied.” (Pref. p. xxiv.)

Imperfectly as I think the Editor was, in the first instance, acquainted with the value of his papers, I cannot allow that he was at all negligent in the performance, according to his own ideas, of many of his duties as Editor. Among the first of these, he felt bound to satisfy his readers of the authenticity of the letters laid before them. What he did with that view is to be found—

1. In certain statements in his preface;
2. In an accompanying pedigree; and
3. In various engraved copper-plates.

“These Letters,” he says in the preface, “were most of them written by or to particular persons of the family of Paston in Norfolk [adding in a note “For an account of this family the reader is referred to the Pedigree,”] (who lived in the reigns of Henry VI., Edward IV., and Richard III.), were carefully preserved in that family for several descents, and were finally in the possession of the Earl of



Yarmouth; they then became the property of that great collector and antiquary, Peter Le Neve, Esquire, Norroy; from him they devolved to Mr. Martin by his marriage with Mrs. Le Neve, and were a part of his collections purchased by Mr. Worth, from whom in 1774 they came to the Editor." (Pref. p. xix.) In notes to this passage the Editor explained who and what Peter Le Neve and Mr. Martin were—information not necessary to be repeated in this Society, where the memory of the first President of the Society of Antiquaries on its revival in the eighteenth century, and of Honest Tom Martin of Palgrave, will ever be held in esteem. The Editor added also some particulars respecting Worth, who was an apothecary at Diss, and who purchased the bulk of Martin's Collections at £630, as a mere money speculation, which it may be remarked seems to have been extremely successful.

From the pedigree before alluded to, which is a history in little of the main descent of the Pastons from the commencement of the fifteenth century downwards, with such collateral branches as are mentioned in the Letters, it appears that Clement Paston, a grandson of the third John, built a magnificent mansion at Oxnead, which thenceforward became the principal seat of the family; that a third Sir William Paston, the sixth in descent from the last of the three Johns, was created a baronet in 1641. He was "an antiquary and collector," and was the father of Sir Robert Paston, who was created a baron in 1673, and Earl of Yarmouth in 1679. As the principal importance of the family was derived from a William Paston, so it departed with another of the same name. William, the second Earl of Yarmouth, according to the pedigree, encumbered his inheritance, and, having survived all his male issue, died in 1732, when his titles became extinct, and his estates were left to be sold for payment of his debts.

Mr. Merivale states that "which of" the Earls of Yarmouth "parted with the papers, does not appear" (p. 130). The facts I have read from the pedigree leave, one would think, but little doubt; and our commonest books of reference make the fact abundantly clear. The first earl was the gentleman immortalized by Clarendon, for having astounded the House of Commons in 1665, by moving a grant of the then unparalleled amount of two millions and a half to carry on the war against the Dutch. (Life, p. 1121, Ed. 1843.) This act of devotion to the royal service ultimately procured Sir Robert his earldom. We are told that he was a person of good learning, and that he travelled into many foreign lands, and collected many considerable rarities and curiosities.<sup>a</sup> Under the second earl, the lavish heir of his accomplished father, the ruin of the family was speedy and total.

<sup>a</sup> Banks, Dormant Baronage, iii, 786.

His marriage with Lady Charlotte Boyle, *alias* Fitzroy, a natural daughter of Charles II., by Elizabeth, Viscountess Shannon, and his reception of his royal father-in-law, and James, Duke of York, as his guests at Oxnead, hurried him into pecuniary difficulties which ultimately reduced him even to accept a pension of £200 a year from the Crown. His library was sold by auction in London in the year 1734.<sup>a</sup> Oxnead Hall was allowed to fall into decay; ultimately it was pulled down and the materials disposed of. As late as 1750, his estates, which once before had been sold for £87,000, were, at the instance of his creditors, put up again, under an order of the Court of Chancery, and were finally disposed of for £92,700 to Lord Anson, the circumnavigator.<sup>b</sup>

Any want of completeness in the statements of the Editor with reference to the ruin of the Pastons, instead of being a circumstance of suspicion, may fairly be regarded as a mere indication of provincialism. Norfolk had rung from side to side with the downfall of this ancient family. The slightest allusion to an incident in the history of the county so portentous and so widely ruinous, would, to a Norfolk man, be sufficient to renew the memory of so great a sorrow, and it would have been difficult to persuade him that the wreck of the Earl of Yarmouth was, after all, an event of mere local importance, or that it could ever become so obsolete that only a Society of Antiquaries would feel a passing interest in it.

Mr. Merivale points out also that in what way the papers "came" from Mr. Worth to the Editor, whether by purchase or otherwise, is not further explained. Mr. Merivale is quite right, but it is difficult to suppose that Worth, who bought these and the rest of Martin's collections to sell again, would have parted with them otherwise than upon a pecuniary payment. The amount may have been small, for the value of the papers was then totally unknown. I know not that anything turns upon this point, but it is perhaps worth being stated that in 1780, seven years before the first publication of the Paston Letters, the Editor communicated to this Society two papers which were subsequently published in the first volume of the Paston Letters, and that on that occasion the Secretary of this Society entered on the minutes a brief history of these Paston Papers, no doubt derived from the information of Mr. Fenn. It entirely agrees with what has been before stated, except that he alleges distinctly in his minute, that Mr. Fenn "purchased" them from Mr. Worth.<sup>c</sup>

Mr. Merivale sums up the history of the descent of these letters thus: "It must certainly be at once admitted that a more meagre and unsatisfactory account of the pedigree of papers, of which the authenticity is matter of question,

<sup>a</sup> Nichols's Lit. Anecd. iii. 616.

<sup>b</sup> Gent. Mag. June 1750, p. 282.

<sup>c</sup> Soc. Antiq. Minutes, vol. xxii. p. 183.



can hardly be imagined. No legal claim, for instance, could possibly be rested on documents which had passed through so many hands, and been subject to the chance of so many tamperings." The answer is, what Mr. Merivale himself goes on to state, that the Editor "tells his story in a simple undoubting manner." The Editor evidently never imagined either that the authenticity of the papers would be called in question, or that any one would dream of the possibility of objecting to them, because a legal claim could not be rested upon them. In that respect, the Paston Letters are exactly like all our other historical manuscripts—like those in the British Museum and in the Bodleian, and like the State Papers in the Public Record Office. No legal claim can be rested upon any of them. But it is entirely a new doctrine that it is a circumstance of suspicion, a cause of complaint against an Editor of such papers, that he does not give such a history of his papers as would establish a legal claim. The account given by this Editor, although it wants the fullness and precision of an abstract of title, is, I would submit, a sufficient statement to satisfy all the ordinary requirements of one who desires to use these papers for historical purposes, which it seems to me is all that an editor of such papers is bound to give.

After deducing the history of his papers, the editor proceeds to a most minute account of what may be termed their paleographical peculiarities; "all which," remarks Mr. Merivale, "I pretermit as unimportant; for the fictions, if such they are, probably rest on the basis of a certain number of really original papers." (p. 131.) I cannot agree with Mr. Merivale as to the propriety of the course which he has here adopted. The case which is under consideration "rests," says Mr. Merivale, in another place, "there is no use in disguising it, on a charge of literary mystification, and that apparently against Sir John Fenn." (p. 135.) "The idea of mere wholesale forgery," he remarks in another place, "is evidently improbable; but that large additions were made by some fabricator to existing originals—additions calculated to render them much more interesting and attractive . . . is a far more credible supposition." (p. 148.) Sir John Fenn is, therefore, now before us on suspicion of having largely and most dishonestly tampered with his papers. The question is, Did he act with editorial *bona fides* or did he not? Surely, in order to answer that question you must take into consideration the whole of his conduct. You must not—more especially in the case of a gentleman whose character up to the day of the publication of Mr. Merivale's paper was altogether unimpeached, and I believe unimpeachable—dwell merely upon some parts of what he did or said—a few of his statements—in which some little presumed want of completeness may be detected or imagined. You must not accept these trifling flaws (if

they be so) as badges of fraud, and throw aside the remainder of his statements as unimportant. You must, in fairness, consider whether he gave such information respecting these papers as he could give, and such as the world had a right to expect from him; and if he did so—if you can come to the conclusion that he designed to tell all he knew—you ought not hastily to suspect from any failure (if there be any such—I know of none) that he was after all a mere cunning fabricator. Let us for a moment suppose that he had omitted to give a full account of the peculiarities of his papers; what an argument against him might have been founded on such an omission. Surely, if the want of such information would have been prejudicial to him, his memory is entitled to whatever benefit may be drawn from a fair consideration of all the information he actually gave.

I shall state what that information was, as briefly as possible:—

He first described the general character of the paper on which these Letters were written, and next “the paper-marks,” with respect to which I believe I may say that he was the first English antiquary who gave representations of these marks, and applied them as a test of antiquity. Our late Fellow, Mr. Joseph Hunter, by no means a man of an uncritical spirit, in his paper on these marks, printed in the 37th Volume of the *Archæologia*, treated the representations of these marks given in the Paston Letters as undoubtedly genuine. The Editor next explained the several sizes of the sheets of paper on which the letters were written, and of the particular pieces of paper used by the letter-writers, for our ancestors were compelled, by a scarcity of the required material, to be a paper-sparing race; and as the editor remarked, “The portion used of a sheet of paper was no more than was required to contain the writing,” the paper being always cut off from the sheet at the end of the letter. He then explained the way in which these letters had been folded up and fastened, the characters of the seals, the insignia they bore, and the contrivances by which the seals were preserved. From these particulars he proceeded to the character of the handwriting, the deciphering of which he admitted had been attended with much trouble and difficulty. He afterwards described the ink, and the effects upon it which had been produced by damp. He then set forth the method which had been pursued in transcribing the papers for the press, and the reasons why he had given two copies of every paper,—one printed with all the contractions and in the spelling of the originals; the other, on the opposite page, in words at length and in modern orthography. To render all this information more intelligible, he added, at the end of the second volume, 14 engraved plates, containing fac-similes of 76 of the signatures to the letters, with representations of 45 of the paper marks, and 28 of the seals; and he appended to every letter a statement of



its size, in inches, a description of the water-mark, and a reference to the plate in his book in which this latter was engraved.

Finally, that all this extraordinary, and, to me, most convincing, editorial particularity might be tested by the ocular observation of the very best living judges in such matters, the editor presented a copy of his publication to this Society, accompanied by a letter addressed to the Earl of Leicester, the President, in a postscript to which he wrote as follows :—" If it be agreeable to the Society, the original letters shall be left for one month in their library, for the inspection of such gentlemen whose curiosity may be excited to examine them." This letter was fortunately inserted in the copy of the book in our library, where it still remains.

The letter was dated "Jan. 1787." On the 1st February in that same year the Society "expressed their satisfaction in having the originals deposited in their library," for the purpose mentioned in the letter of their "worthy member," and on the 23rd March, 1787, in an advertisement, printed in a new edition of his publication, the editor stated :—

"It may not be improper just to mention that the original manuscript letters were, immediately after the publication of the first edition, deposited for some time in the library of the Society of Antiquaries, for the general inspection and examination of the members of that and of the Royal Society."

The truth of this statement will be found hereafter to be corroborated in a singular manner.

It seems scarcely possible for a painstaking, conscientious editor to have done more; or for any one, after reading what I have stated, to doubt the fact of the temporary deposit of the originals in our library. I will not dwell on Mr. Merivale's suspicions upon this subject, partly because his paper was written before much of the evidence I have just stated was brought to light; and partly also because I think he was a little misled by not finding a notice of the fact of the deposit in the *Archæologia*. The *Archæologia* has never been deemed a proper place for such notices, but it is a great pity that such an incident as this temporary deposit was not recorded in our Minutes. What has ensued is an instruction and a warning to us, and we shall owe thanks to Mr. Merivale if henceforth our practice in this respect be amended.

In my own opinion, the fact of this deposit once established, is almost conclusive upon the whole case. The transaction took place in the days of Astle,

Gough, Caley, and many other eminent antiquarian contemporaries, men who could not have been deceived by pretended originals, and who would instantly have discovered any possible interpolation. To court the inspection of these men was a test which a dishonest editor would never have been mad enough to propose;—a test which, taken in connection with all the other evidences furnished by this gentleman of obvious anxiety to give inquirers every possible satisfaction, ought to outweigh a multitude of suspicions.

The success of the publication far outstripped the expectations of the editor. A second edition of vols. i. and ii. was called for immediately. Mr. Merivale suspects “this so-called second edition.” Mr. Gairdner, in his admirable paper in reply to Mr. Merivale—a paper which almost renders what I am doing unnecessary—certifies, upon comparison, that the second edition was an actual re-impression; and I beg to add to what he has stated, that the first volume of this second edition contains 56 corrections of the text of various kinds, principally derived from suggestions of Mr. Dalton, which are treated of in a separate paper by Mr. Almack; that the second volume contains other 29 similar corrections,<sup>a</sup> and that there are also introduced into the second edition two new plates numbered 15 and 16, and containing four fresh fac-similes of letters and parts of letters.

In further evidence of the willingness of the editor to give all possible information, I am enabled, by the kindness of my friend W. J. Thoms, Esq., F.S.A., to exhibit a fac-simile of one of the original Letters, which the editor allowed to be engraved and published in the “*European Magazine*” for April, 1787. The letter itself is printed in vol. ii. of the Paston Letters at p. 257; and being one of the most interesting of the domestic portion of the series, attracted a great deal of attention at the time of publication. It is a simple, natural communication from a young wife in Norfolk, M. P. [Margery Paston], to her husband, the third John Paston, in London, and details in a homely manner various wants and anxieties, which occurred to the writer during the progress of her first pregnancy.

The editor was thirteen years in producing his first and second volumes. Stimulated by public approbation, at the end of two years he published Vols. iii. and iv., edited in the same careful manner as before, and illustrated by 12 new plates, containing 71 fresh autographs, 33 additional paper marks, and 16 additional seals. His occupations as High Sheriff of Norfolk, in 1791, drew him away from literature for a considerable time; but at his death, in 1794, he left another

<sup>a</sup> A list of these corrections is ordinarily found at the end of vol. ii. of the first edition.



volume presumed to be ready for the printer, which was ultimately seen through the press by the late Mr. Serjeant Frere, and published in the year 1823. This volume also has an additional array of 40 fac-similes of autographs, 21 paper marks, and 11 seals.

The five volumes contain in the whole 488 letters and papers, of which there were written—

	Papers.
By various members of the Paston family, principally by the three successive John Pastons, and by Margaret Paston, the widow of the first John Paston . . . . .	214
By other persons, but all addressed to members of the Paston family, principally to the three John Pastons and Margaret Paston . . . . .	203
These amount to . . . . .	<hr/> 417

and the figures show how really and almost entirely these letters constitute the correspondence of the Paston family.

Of the remaining 71, many relate to the affairs of Sir John Fastolf and his estate, and the remainder are copies or original papers bearing upon public affairs.

The temporary deposit of the original Letters contained in vols. i. and ii. in the library of this Society, drew after it consequences of some importance to the editor. "During their continuance in that repository" as we are told in the preface to vol. iii. "it was intimated to the editor that the King had an inclination to inspect and examine them; they were immediately sent to the Queen's Palace, with an humble request from the editor, that if they should be thought worthy of a place in the royal collection, His Majesty would be pleased to accept them; to this request a most gracious answer was returned, and they are now [this preface was dated 23rd April, 1789] in the Royal Library."

If this be not one of the most impudent falsehoods that ever was published, we must accept it as a recognition of the fact of the deposit and inspection of the Papers in the library of this Society. If nothing of the kind took place, or if the Society thought otherwise than favourably of them, we must allow that our forefathers of this Society shut their eyes to the frauds of Mr. Fenn, and allowed him to impose upon the Sovereign, from whom they had so recently derived our peculiar privileges—a supposition which is tantamount to a *reductio ad absurdum*.

The "most gracious answer" which Mr. Fenn received was probably to the effect that if Mr. Fenn attended the Levee and presented his Letters, His Majesty would accept them, and confer upon him the honour of knighthood. At any event he attended, presented his letters, and was knighted on the 23rd May, 1787. His knighthood is registered in the London Gazette, and the following fuller account of what took place is given in the Morning Chronicle, of the 24th May, and in the London Chronicle, from the 22nd to the 27th, under the date of the 24th.

"Yesterday John Fenn, Esq., attended the levee at St. James's, and had the honour of presenting to his Majesty (bound in three volumes) the Original Letters, of which he had before presented a printed copy; when his Majesty, as a mark of gracious acceptance, was pleased to confer on him the honour of knighthood."

In partial corroboration of this transaction, it may be added, that there still exists in the library of King George III., now in the British Museum, the printed copy of the Paston Letters, which is here stated to have been "before presented," but the originals, although publicly presented to the King, never seem to have found their way into the Royal Library. What has become of them is at the present time altogether unknown. More than forty years ago I visited the Royal Library in old Buckingham Palace, in company with my friend Mr. Amyot, formerly treasurer of this Society. He introduced me there to Mr. Carlisle, the Secretary of this Society and the Royal Librarian. We found him sitting surrounded by that noble collection of books, in the fine octagon room in which the celebrated interview took place between George III. and Dr. Johnson. We had a pleasant gossip respecting the contents of the library, in the course of which Mr. Amyot remarked, "You have never found the Paston Letters." "No," replied Mr. Carlisle, "They never came into the library." Mr. Amyot added, that he had understood that they were last seen in the hands of Queen Charlotte, to which Mr. Carlisle assented, emphatically repeating that they were never in the library. The same account is, I believe, current in other quarters, and it has been thought that Queen Charlotte lent the MSS. to one of her ladies in attendance. If so, they may still turn up in some private library, or in some storehouse connected with the office of the Lord Chamberlain or with one of the Royal palaces.

All the other originals were for a long time equally unfortunate. When Serjeant Frere edited the fifth volume of the Letters, he announced that it had been printed from transcripts almost entirely in the hand-writing of Mr. Dalton, a well known and very highly respected solicitor, at Bury St. Edmund's. "The



originals of the fifth volume, the Serjeant remarked, "I have not been able to find. Some originals I have which appear not to have been intended by Sir John Fenn for publication. The originals of the former volumes were presented to the late King, and were deposited in his Majesty's library." The last words are evidently derived from Sir John Fenn's statement before quoted. They mean, I take it, no more than this, that he offered the Letters as a gift to the Royal Library; that his offer was accepted; and that he had committed the Letters to his Majesty's custody, which he took to be tantamount to depositing them in the Royal Library. Unfortunately they missed their way, and Sir John was mistaken. It will be a satisfactory result of Mr. Merivale's paper, if the officers of the Royal household are stimulated by the discussion it has excited to make a thorough search in all possible places of deposit.

That the Letters given to George III. comprised only the originals published in the first and second volumes, I take to be quite clear, notwithstanding the contrary opinion of Mr. Serjeant Frere. It is extremely unlikely that Sir John Fenn should have given away, in 1787, the originals of papers which he did not publish until 1789. He had had too much experience in editing, not to know how frequently an editor needs again and again to look at his manuscript whilst his papers are passing through the press. Added to which, it is evident from some of Mr. Dalton's notes upon the second and third volumes, to be laid before the Society by Mr. Almack, that originals of those two volumes were in the hands of Mr. Dalton and Sir John Fenn in 1788.

The disappearance of all the originals was certainly a very singular circumstance. It might well excite considerable amazement, and if it could be connected with Sir John Fenn, might justify some misgivings. But I cannot at all agree with Mr. Merivale in the doctrine which he lays down in reference to it. "It is impossible," is his *dictum*, "to avoid thus much of accusation; whatever amount of suspicion is deducible from the most untoward 'disappearance' of the alleged originals, rests on Sir John, and on him alone." Is Sir John to be suspected because the officers of the Royal Household were careless or ignorant, or because a lady to whom the volumes were lent never returned them, or because Serjeant Frere overlooked the originals of vol. v., and may have done the same by those of vols. iii. and iv.? Show that Sir John Fenn did something, or omitted to do something, which occasioned the disappearance of any of the volumes, and then you may begin to suspect him; but there can be nothing in the loss of the originals of vols. i. and ii.—if they be lost—which entitles any one to throw the blame of an incident so rightly termed untoward upon him. Since the publica-

tion of Mr. Merivale's paper the discovery of the originals of vol. v. goes far to remove from Sir John all shadow of doubt.

And this brings me to the great event of this evening—the exhibition upon our table of the originals of vol. v. It turns out that Serjeant Frere was mistaken. Inclosed in a little paper case, which, somehow or other, Mr. Serjeant overlooked, there were in his possession these 112 papers, all arranged in perfect order, preserved with the greatest care, and marked by Sir John Fenn with neat pencil memoranda. They were found in a box of Sir John Fenn's, and with them the other papers which Serjeant Frere mentions as not appearing to have been intended for publication. These latter are probably 270 in number, and are all preserved in the same careful manner as the others, inclosed, bundle by bundle, in sheets of paper, which are indorsed with memoranda of their contents, and notes by Sir John Fenn of the times when he went through them, and took out from each bundle, two from one and three from another, such as suited the volume of his publication that he had then in hand.

During the little time that these originals have been in London, I have collated several of them with the printed book, and I am able to vouch for the general accuracy, in the instances which I have examined, of the copies printed from the transcripts made by Mr. Dalton.

As to the genuineness of the papers themselves, I will not assume to speak with anything like authority upon such a subject. But I state it unhesitatingly, as my own individual opinion, that they are unquestionable documents of the period to which they profess to belong. If I may take the liberty of doing so, I would suggest that, if Mr. Philip Frere, who is now the owner of these papers, and kindly exhibits them this evening, will permit them to remain in our Library for a little while for inspection, the Society might appoint a Committee of the persons amongst us who are most competent, to examine the whole of them, with power to invite the attention to the MSS. of all persons interested in the subject; and to prepare such a report as may be entered upon our minutes or be dealt with in any other way which the Society may deem right.

As to any interpolation or garbling of these papers, as suspected by Mr. Merivale; so far as I have observed, there is nothing of the kind. A frequent indorsement of the contents is all the addition that I have seen, that has been made to any of them (except Sir John Fenn's pencil notes before-mentioned), and the chief indorsements are in a modern hand, without any affectation of disguise. The hand is probably that of Sir John Fenn, but I am not quite certain that it is so.

Most of the arguments levelled against Sir John Fenn's publication, even



against the volumes the originals of which have not yet turned up, will be found to be refuted by the production of these papers, if the general opinion be, as I expect it will be, that they are genuine. For it must be borne in mind, that the Letters before us are not a continuation in point of date of the correspondence contained in the former volumes, but a separate selected portion of the same correspondence. It would seem, from what I have observed of the way of keeping these papers, and from Sir John Fenn's notes upon them, that his mode of selecting his MSS. for publication was the following:—The whole correspondence, extending from Henry VI. to Henry VII., or later, was first arranged in chronological order, and then divided into separate bundles. When Sir John desired to make his selections for publication, he visited each bundle in succession, and took out from it one, two, or three papers for every year, or other period of his intended course. In the first instance, he selected what he esteemed the most important historical letters, extending from Henry VI. to Richard III., and published them in vols. i. and ii. His next draught consisted probably of what he thought the most interesting of those which remained. This supplied vols. iii. and iv.; and another draught of 112 letters, running through the whole period, and selected as before, concluded his work with vol. v. Two things followed from this mode of selection:—1. That the volumes contained more and more private letters the further they advanced. This was not exactly to the taste of Sir John Fenn, who preferred the historical to the private letters, and brought in some historical letters from other sources; but it was quite in accordance with the opinion of his readers, most of whom gave the preference to the private letters. From the glance that I have had at the residue of the papers now left unpublished, they seem to me to consist almost entirely of private letters. 2. Another result is that there are letters upon the same subject in each of the published portions. For example, the marriage of Margery Brews to John Paston—a very interesting topic of correspondence—is treated of in vols. iii. and iv. and also in vol. v. Supposing the letters in vol. v. to be genuine, surely the previous letters on the same subject, which are full of coincidences and connections in story, phrase, and character, and supply necessary links and clues which bind the whole together, can scarcely be supposed to be a mere fabrication. By such means I make no doubt that the whole of these separate publications may be shown to form one genuine and connected correspondence, although it has been split up into fragments, in the way which I have described.

Again, many of Mr. Merivale's suspicions are effectually negatived by this production. He dwelt with considerable emphasis upon the editor having omitted

at first to announce to his readers that he had other papers in his custody besides those contained in vol. ii. I think it really did appear in his preface to vol. i., that he had others, although perhaps imperfectly; but if Mr. Merivale be right, what follows? Was the editor's silence a mark of fraud, or an instance of mistake, or of forgetfulness of his editorial duty? It matters not—whether he stated the fact or not—the letters on the table prove that he had other letters in his possession.

Mr. Merivale thought it improbable that such a correspondence should have been carried on in an age commonly called illiterate. It is unnecessary to enter into the argument, or to refer to the Plumpton Correspondence, and to similar letters in the *Excerpta Historica*, in the old editions of Collins's *Peerage*, and elsewhere. On the table, we have the very correspondence itself.

Even if such a correspondence could have been carried on at the time alluded to, Mr. Merivale thought it unlikely to have been preserved. The course of the family succession very well accounts for the preservation, but here it is actually preserved and existing before us.

Mr. Merivale objects that in the Paston Letters there is a suspicious deficiency of special information, and a servile adherence to authorities. On this point Mr. Gairdner has published some excellent remarks, and I am quite prepared to show that Mr. Merivale is mistaken. The letters abound in that very description of special information which, if they are genuine, it was to be expected they would contain. Statements and allusions occur with reference to a multitude of subjects—especially to subjects of local interest—as, for example, to affairs of the county of Norfolk, and proceedings of the Corporation of Yarmouth, which offer innumerable tests of accuracy. I intended to have troubled you on this point at considerable length, but the production of the letters is a sufficient reply.

Equally convincing is the result of this exhibition on Mr. Merivale's comment on the ease and fluency with which the Pastons wrote. He is surprised at the modern air of their style and phraseology, at the absence of legal and State Paper tautology, and occasionally at the appearance of words very like those used in the conversational English of the present day. The tautology alluded to will be found in all legal and formal papers, whether in the Paston Letters, or elsewhere; but with respect to private papers of that period, those who are intimately acquainted with them are continually startled to meet with bold, manly expressions, couched in simple English which might have been written or spoken yesterday. Of this class, is one of the phrases which struck Mr. Merivale—"I am excusable both to God and you!" He could not recognise in those emphatic words the ring of the fifteenth century; yet



there the words stand in one of the papers open before you. Again, the word dreadful used in a jocular sense,—“the dreadful man, James Ratchliff, your verderer,”—occurs in the MS. before us, exactly as it is printed. The truth is, that our forefathers of those days were simple, manly Englishmen, and cast our native tongue into a form, the rough edges of which we have somewhat smoothed, but which we have never been able, substantially, to improve. When we read their papers, we feel that we can claim them as our ancestors, not merely by the ties of a common lineage, but by those also of a common speech.

If the originals of the other volumes of Sir John Fenn turn up—and when I observe the care with which Sir John preserved those of vol. v, and remember his honourable character and his punctilious accuracy and propriety in all the relations of life, I have great hope that, with Mr. Frere’s assistance, we shall at any event have those of vols. iv. and v. before us on this table—I say that when that day comes I have no doubt that Mr. Merivale will find the whole of the words and passages he has quoted (except perhaps in one case, in which I suspect a little typographical blunder) to have been printed with exactness; and unless that day should come with speed, Mr. Gairdner and others will, in the mean time, have paralleled them all from other writings of the period. I could add something to what has been written already, but I forbear.

Of the three suspected anachronisms in manners adduced by Mr. Merivale, those relating to the Prior’s request for a bill of exchange, and the allusions to the school and college experiences of Walter and William Paston, have been sufficiently answered by others. I will close my remarks, many of which have necessarily been written very hurriedly, with a few words on the allusion to playing cards. Mr. Merivale thinks their use was as yet uncommon in 1484. The following extracts seem to prove the contrary:—

It appears on the Rolls of Parliament that, in 1461, Edward IV. gave a legislative assent to certain articles; and among them occurred the following:—

“That no Lord or other person of lower estate, condition or degree, whatsoever he be, suffer any dicing or playing at the cards, within his house, or elsewhere where he may let it, of any of his servants or other, out of the twelve days of Christmas; and if any presume to do the contrary at any time, that he avoid him out of his house and service;” and that none other Lord, nor other person, receive or accept to his service any person so avoided, without the written assent of the first master.<sup>a</sup>

In 1464, the same king passed an act, whereby “playing cards” are enumerated among other “wares ready wrought,” as being prohibited to be brought into the

<sup>a</sup> Rot. Parl. v. 488.

realm. This was probably a measure of protection to persons who had introduced the making of cards into England.<sup>a</sup>

In a bundle of petitions, which range from 1472 to 1475, there is one in which it is stated that:—Lords, knights, squires, gentlemen, yeomen, and other commoners, had used the occupation of shooting for their mirths and sports, with bows of ewe, which were brought into the kingdom, but now there was great scarcity of such bows brought in; and such as were brought in were “set to outrageous price,” *i.e.*, 100s. a hundred, “one with another,” the price having formerly been 40s. an C. for the best, and those fit for children’s bows were 10s. or 13s. 4d. a C. “at the most;” and then the bowyers sold bows from 8d. to 1s., which are now from 5s. to 10s., whereby the occupation of shooting is almost left; and “yeomen, in default of such bows, now use unlawful occupations, as playing at the cards, dice-playing, and other unlawful games forbidden by the laws, and to the great hurt, shame, and reproof of this noble realm.”<sup>b</sup>

These passages will, I hope, exclude the mention of “cards” as the amusement of a manor house, from among Mr. Merivale’s suspected anachronisms.

No one would be more pleased than myself to find that the consideration of the original papers now exhibited, induced Mr. Merivale to do justice to the character of Sir John Fenn, and again to accept the Paston Letters, for what Mr. Hallam terms them, his “faithful guide,” through the dark period to which they relate. In that character they have hitherto been accepted; and such I believe they will remain to all inquirers, I trust, without a single exception.

<sup>a</sup> Stat. 3 Edward IV. c. 4. Auth. Ed. ii. 397.

<sup>b</sup> Rot. Parl. vi., 156.



III.—*Remarks on the Authenticity of the Paston Letters*, by RICHARD ALMACK,  
*Esq., F.S.A. : in a letter to C. KNIGHT WATSON, Esq., M.A., Secretary.*

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Read November 30th, 1865.

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16th November, 1865.

MY DEAR SIR,—

THE authenticity of the Paston Letters having been seriously impugned, it is a duty to give any explanation on so important a question. I would, therefore, beg to state some circumstances which happen to be particularly within my own knowledge.

On the 23rd May, 1860, Sir Walter C. Trevelyan, Bart., drew my attention to a discussion lately raised upon this subject in *Notes and Queries*. I reminded him that we were then within a few miles of Mr. William Dalton, at Bury St. Edmund's, who copied most of the originals for publication, and discussed with Sir John Fenn the reading of many difficult words and their meaning; notes of which discussion he still had in his possession. Sir Walter, on my introduction, called on Mr. Dalton, who was then in his ninety-fourth year, but his mind and memory were, to the day of his death, unimpaired. On the 2nd of the following October, Mr. Dalton died. In *Notes and Queries* for November 3rd following, Sir Walter Trevelyan reminded the literary public that he was the gentleman who had transcribed for the press the Paston Letters "from the originals," and gave a short account of his interview with Mr. Dalton, who had shown him several sheets of notes, which suggested to the Editor various corrections and observations.

On the death of Mr. Dalton I found, what was unknown to me, that he had, seventeen years before, appointed me trustee under his will. I also received a note explaining this, and another dated 3rd May, 1843, in which he gives to me the five presentation volumes of the Paston Letters, "*and the MS. papers with them, which are in fact now of no use.*" This kind and characteristic letter I now

produce for the honour of being mentioned in a manner so highly flattering by so valuable a friend.

I also produce the five printed volumes and Mr. Dalton's MS. notes, and his own written minute of his interview with Sir Walter Trevelyan, which is really the protest of an honourable man against an imputation respecting which he expressed to me his indignation. The note is as follows :—

“ Thursday, the 24th of May, 1860,

“ Between 2 and 3 o'clock P. M.

“ Sir Walter Trevelyan, sending in his card, announced he called respecting the Paston Letters, and said it was doubted whether they were original. I showed him the observations which I made upon Sir John Fenn's copies from the originals, which I had from him for the purpose of comparing the one with the other. I went to Downham, in Norfolk, in 1783, and remained there until 1790, and the observations were made during that time. Sir Walter Trevelyan has therefore my evidence as to the originality and existence of the letters, fortified by the observations upon the different volumes. Sir John Fenn was exceedingly near-sighted, the original letters were very difficult to decipher, from the writing itself, from the state of the paper, the effect of time, and other causes.

“ W. DALTON.”

The title-page of the presentation copy of the first volume contains the following in Sir John Fenn's writing :—

“ To Mr. Dalton:

“ These volumes are presented by his obliged friend

“ THE EDITOR.”

The first of the second publication (vol. iii.) contains this writing by Sir John Fenn :—

“ To Mr. William Dalton:

“ This continuation of original letters is presented as a testimony of *thanks*,

12 May, 1789.”

“ From

“ THE EDITOR.”

With reference to some of the circumstances I have mentioned, I had a conversation, in London, on 31st July, 1861, with Mr. Woodward, H. M. Librarian, and it was arranged that I should meet him in the Library at Windsor Castle. I went there on 2nd August, and I understood that the Prince Consort was much interested in the Paston Letters, and was sanguine in his expectation that the missing originals would be found somewhere; and, for reasons given, His Royal Highness considered a place named as most likely, and that a strict search would



be made, for which there would be facility the following summer. It was arranged that I should take to London, when the Court went there for the winter, the MS. Notes by Mr. Dalton, the five presentation volumes, &c., for the purpose of their being seen by His Royal Highness. We all know the calamity which put an end to this.

In consequence of the leading article in the *Fortnightly Review* for 1st September last, by Mr. Herman Merivale, I attended at Windsor Castle on the 2nd instant. Mr. Woodward confirmed my recollection as to my visit in 1861, and the facts I have ventured to allude to respecting the lamented Prince Consort. I am at liberty to add, that searches are already in progress, and that no doubt, under the necessary authority, the missing MSS. will now be found, if possible.

During my long intimacy with Mr. Dalton the Paston Letters were often discussed, and I believe his impression was that the lost MSS. were last seen when "handed by Queen Charlotte to a lady-in-waiting."

Mr. Dalton was a gentleman, well connected, highly educated, and in affluence all his life, remarkable as much for his inflexible integrity as for his talent and strength of mind. If the imputation respecting the Paston Letters be even partly well founded as to the first four volumes, he, as well as Sir John Fenn, must have been not only unprincipled, but also the most wonderful fabricators that the world ever produced. Chatterton would have been a mere child by comparison, for his writings were chiefly romance, and theirs contain facts in almost every sentence.

I venture to mention that I have had the honour to be a Fellow of the Society of Antiquaries for thirty-three years, and during that time I have resided in a county adjoining to that in which were the homes of the Pastons and of many of their correspondents, and in the parish where their friend John Clopton lived to the age of about eighty-five, and whose contract to marry Elizabeth Paston is set out, vol. 3, p. 197; also his letter to her brother Sir John, about his "heart's-ease" and the "jointure." He says, "I was on Thursday last past at Cavendish, to deliver an estate to Wentworth in the land that was my brother Cavendish's." He mentions also his brother Denston and his neighbour Crane, &c. These names will bear strict examination; and John Clopton lived to put up their portraits in Melford Church, where I have recently restored and mended them. He did not marry Elizabeth Paston, and probably there was not much love in the matter, as the daughter was willing to marry him if "it shall be both for her worship and profit," and the mother asked nothing but "if it be so that his land stand clear."

In pursuing my particular antiquarian inquiries—often more or less in connection with Mr. Dalton, and I may say with the late Director of the Society of Antiquaries, John Gage, Esq., who became the representative of the historical family of Rokewode (named in the Paston Letters)—my attention has been continually directed to the events and persons mentioned in those letters. I have met with many confirmations, but never with anything to raise a particle of doubt.

No doubt Mr. Herman Merivale's objections and suspicions will be answered by competent persons. As to the Pastons being only Norfolk Squires, and having letters from great public characters, what was their friend John Clopton? Only a Suffolk Squire. Yet he was on terms of intimacy with the same great people. He was executor to the will of Anne Duchess of Buckingham, daughter of Ralph Neville, Earl of Westmerland, and to Sir Thomas Montgomery, K.G., who is much mentioned in the Paston Letters. Clopton was a Lancastrian, and although he was arrested with the Earl of Oxford, Aubrey de Vere his son, Sir Thomas Tudenham, and others, for *corresponding with the Queen of Henry VI.*, he was the only one who saved his head when all the rest were decapitated, and his escape is attributed to the fact of his being a trustee for Cecily, Duchess of York, daughter of Ralph Neville, first Earl of Westmerland, and mother of King Edward IV. The portraits of his connections, still remaining in Melford church, include persons of the highest rank and importance.

I shall not enter into a long account of Mr. Dalton's Notes, or give many extracts. I infer from them that the originals of the two first volumes were copied and translated by Mr. Dalton, and his notes are made on the printed copies which I now place on the table, pointing out errors in the printing, and some second thoughts as to doubtful words and their meaning, and referring to the originals. The notes on the third and fourth volumes are different. I infer that Sir John Fenn had copied most of them himself, and given his translation<sup>a</sup> to Mr. Dalton for careful comparison and consideration.

Mr. Dalton's notes on the third volume alone consist of more than four hundred

<sup>a</sup> On further consideration, I incline to think that Mr. Dalton made an exact copy or literal transcript of the ancient letters (that copy printed on the left hand), and that Sir John Fenn translated them into modern language (that copy printed on the right hand). Mr. Dalton's manuscript notes were made on the printed copies of the first two volumes, and as to vols. 3 and 4, I believe his comments are on Sir John's translation of the literal copy (which Mr. Dalton had made, and which he refers to generally as the original—being, as he believed, exactly the same as the original), and that these notes were made, as dated, a year before vols. 3 and 4 were published. The observation in Mr. Dalton's note respecting his interview with Sir Walter Trevelyan, in which he mentions Sir John Fenn's copies from the originals, means, I believe, Sir John's translated copies.



corrections, doubts, and suggestions, and in almost every instance Sir John has adopted them, as shown by the printed volume. The alterations are not important to the general history; but the volume, if printed unaltered, would have been much more liable to criticism and doubt than it is now, especially as to names of persons and places and modern words and meanings.

For example, in Letter 34, Sir John Heveningham, in a letter to Margaret Paston, requests that she "will send my Cousin William *Staunton*." It appears that Sir John Fenn first wrote this name "*Robert Fraunton*." This might have been a serious mistake. Supposing that, instead of the unknown name of Fraunton, it had been printed Robert or William "*Naunton*,"—both names in an ancient knightly Suffolk family—and that it had now been discovered that the only known member of that Christian name and period had died some years before, this would fairly have shaken faith in the Paston Letters (the originals being lost); and yet, it would have been a mere mistake in reading old bad writing.

The MS. notes on the Letters in this volume are dated "11th May, 1788," the volume being published 1789.

They show the most minute eriticism by a clever, learned young man, who was at that time only twenty-one years of age, establish the existence of the original manuscripts, and evidence the care taken by Sir John Fenn to secure the accuracy of the printed volumes.

Believe me, sincerely yours,

C. KNIGHT WATSON, Esq.

RICHARD ALMACK.

#### IV.—*Report of the Committee on the Paston Letters.*

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Read 10th May, 1866.

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I. The Committee<sup>a</sup> appointed by the Council on the 12th December, 1865, to collate the fifth volume of the Paston Letters with the original manuscripts exhibited to the Society on the 30th November, 1865, by Philip Howard Frere, Esq., beg to report that, in conformity with the directions of the Council, they invited E. A. Bond, Esq., Joseph Burt, Esq., P. H. Frere, Esq., James Gairdner, Esq., T. D. Hardy, Esq., Sir Frederic Madden, and Herman Merivale, Esq., to act on this Committee. Mr. Gairdner declined the invitation; and Mr. T. D. Hardy found himself unable, from the pressure of other business, to give the necessary attendance; but all the other gentlemen cordially accepted the invitation, and took part in the labours of the Committee.

II. The Paston Letters were originally sent forth from the press as follows:—

Vols. i. and ii., in 1787;

Vols. iii. and iv., in 1789; and

Vol. v., in 1823.

Vols. i. to iv. were published entirely under the editorship of Sir John Fenn; and in the preface to the third and fourth volumes<sup>b</sup> he announced his intention to publish a further continuation. The preparation of this closing volume was interfered with by Sir John's increased weakness of sight, and by his appointment in 1791 to the office of sheriff of his native county. He states in his preface to vol. v., which is dated the 23rd February, 1791, that, in anticipation of the amount of business which the duties of that office would throw upon him, he

<sup>a</sup> The Committee, as originally appointed, consisted of—

Sir John Boileau, Bart., V.P.

John Bruce, Esq.

A. W. Franks, Esq.

William Hardy, Esq.

H. C. Hamilton, Esq.

J. G. Nichols, Esq.

C. S. Perceval, Esq.

W. S. Walford, Esq.

<sup>b</sup> Vol. iii. Pref. p. xvi.



had employed much more of his time than usual, during several months preceding his entry upon the office of sheriff, in the preparation of his fifth volume, "that I might complete"—such are his words—"the most material parts of it before my appointment. This," he adds, "I accomplished; and here I take leave of the public, as an editor, perhaps for ever."

There is evidence that, after he had written the above passage, and after the conclusion of his shrievalty, he still worked on the Paston Letters. In a letter, dated the 27th September, 1793, and printed in Nichols's *Literary Illustrations*, vol. v. p. 179, Sir John says, "During the last winter and spring, I nearly finished my fifth volume of Paston Letters, which I hope will, by next summer, go to the press; but to whose press I am not yet certain." The summer anticipated never arrived to Sir John, whose labours were brought to a close by his sudden death on the 14th of February, 1794.

From Sir John's death, the papers remained in the possession of his widow until her death in 1814. They then passed to Lady Fenn's nephew, Mr. Sergeant Frere, Master of Downing College, Cambridge, who states that he found the copy of vol. v. "as left prepared for the press."<sup>a</sup> He saw it through the hands of the printer (C. Roworth, Bell Yard, Temple Bar,) on its publication in 1823.

III. All these volumes present the papers which are published in them in two different forms, or versions, which are printed on opposite pages; one version (that printed on the left-hand page) purporting to be, as nearly as possible, an exact copy or representation of the original manuscript, with its contractions and peculiarities in orthography; the other version (that printed on the right-hand page) being a rendering of the original into modern English.

All the volumes were prepared for the press in the following manner:—Sir John Fenn resided at East Dereham, in the county of Norfolk, from his marriage on the 1st January, 1766, till his death. During the portion of that period within which the work of copying the manuscripts, and making the book ready for the printer, was accomplished, there also resided in the same town Mr. William Dalton, a young gentleman, who was serving his articles to Mr. James Smyth, a solicitor at East Dereham. By some arrangement between Sir John Fenn and Mr. Dalton, the nature of which has not transpired, the latter made the literal transcripts of the original manuscripts, from which the left-hand version was printed, whilst Sir John himself made the modern or right-hand version, and wrote the notes and the prefaces.

<sup>a</sup> Advertisement to vol. v. p. vii.

That this was the general course adopted in the preparation of the work for the printer is shown in the paper communicated to this Society by Richard Almack, Esq., F.S.A., which was read on the 30th November, 1865; and it also appears from the statements of Serjeant Frere, prefixed to vol. v. In the same statement Serjeant Frere informs us that, so far as respects the preparation of vol. v., although the transcripts of the original letters were almost entirely in the handwriting of Mr. Dalton, there were a few which were in that of Sir John Fenn.

The labours of Serjeant Frere in connection with vol. v., are thus stated by himself:—"I have revised the whole, and corrected what appeared to me to be obvious mistakes or inadvertencies, but I have been altogether very sparing in alteration;"<sup>a</sup> partly, as it would seem from a subsequent passage, out of a feeling of respect for the editor himself, and a deference to his judgment; and partly from a desire to preserve uniformity between vol. v. and its predecessors.<sup>b</sup>

IV. The first point to which the attention of the Committee was directed, was to ascertain, by external examination, whether the documents submitted to them, which had been found at Dungate, in the county of Cambridge, the residence of Philip H. Frere, Esq., and had been brought thence for exhibition to the Society, by Mr. Watson, the secretary to the Society of Antiquaries, were really genuine. A minute inspection of every one of the manuscripts, without the discovery of any single circumstance which could create a doubt, has produced in the minds of the members of the Committee the most unhesitating certainty upon this point. It is their unanimous opinion that all these papers are unquestionable remains of the periods to which they profess to belong, or to which they have been assigned. In every particular by which such documents are ordinarily tested, in the character of the several hands-writing, in the nature of the paper on which they are inscribed, in the appearance of the ink with which they were written, in the several ways in which they have been folded, fastened, sealed and directed, they present marks of genuineness and indications of their age which are perfectly unmistakeable, and negative all possibility of fraud.

V. Having arrived at this positive conclusion upon what must be the fundamental point in this inquiry, the Committee proceeded to consider whether there were any traces in these papers of interpolation, or unauthorised addition made, at any time, to the contents of the originals. All the papers have been carefully

<sup>a</sup> Advertisement to vol. v., p. viii.

<sup>b</sup> Ibid. p. ix.



gone through, with distinct reference to this particular point, without the discovery of anything of the kind.

The attention of the Committee has been specially directed to the two passages in vol. v., which were lately pointed out as being suspiciously modern in sound and character. "I am excuseabyll both to God and yow," (p. 296) and "the dreadfull man James Radcliff." (p. 382.) Both these passages are unquestionable parts of the original documents, and stand therein exactly as printed above.

In very many of the original papers there occur additions and corrections, obviously made by the writers at the time of writing, for the sake of correction, or by way of inserting after-thoughts. In making those alterations, a single word, or several words, have been inserted by interlineation, and sometimes words or letters have been struck through with the pen, either by overlaying them with a thin single stroke or with a broad line of ink; but no example has been found of any abrasion of the surface by the use of a knife. In the instances of alterations effected by drawing a single line through a word or letter, the line was occasionally so slight, and the ink has become so pale through lapse of time, that the transcriber has sometimes doubted whether the letters or words in question were intended to be cancelled or not, and hence have arisen some few mistakes.

A few examples of the alterations which are now alluded to will show their nature, and the perfect good faith with which they were made.

E. IV. No. 10. I prey God send yow the holy gost amonge yow in the plement howse & rather þe devyll we sey then ye shold grant eny more taskys.

This passage was originally about to be written without the "we sey," and the writer had proceeded as far as "then ye"; an alteration was then made, the "then ye" was struck out, and the writer proceeded again introducing the modifying "we sey." Some alteration or mistake in spelling occurred also with reference to the word "grant," which has been consequently left in such a state of uncertainty that it stands "gate" in the left hand, and "grant" in the right hand version of the printed book.

*Ibid.* No. 17. Of me and myn I wold hauyt grauntyd yf I myth; send me word yf ye her' ony tydynges from yowyr brodyr how he doth of hes seknes.

Here are several alterations; "yf I myth" was originally intended to have been "yf yt myth be"; before the final "be" was completed the writer changed her mind and wrote a caret as if intending to interline an alteration. Finally she made the alteration in another way, but left the caret standing; the final words were originally written "w<sup>t</sup> hys seknes."

E. IV. No. 46. Sythyn yowyr fadyr deyyd whom god assoyle . . . . I wuld no lēg<sup>9</sup> fynde hym at my cost & charge hys boord & hys scole hyer.

The word "assoyle" was in this passage originally written "absolue", and "at my cost & charge" was an explanatory afterthought interlined in the usual way.

In addition to a multitude of these contemporary alterations, there are written upon many of the letters and papers notes or memoranda, contemporary or in some cases a little later, relating to their contents, to their dates, or to the identification of the writers.

A few examples of these memoranda will be more satisfactory than any amount of description.

E. IV. No. 6 is endorsed "A lfe of Sr Jo. Paston shewing the Kynges favor towardē hym for the restoring of Caister."

*Ibid.* No. 13 is endorsed "M<sup>r</sup>garet Paston refuseth to take administra<sup>ti</sup>on after the death of Jo. Paston hir husbond."

*Ibid.* No. 33 is endorsed "Caister is gotten agayn'."

*Ibid.* No. 39. An original draft statement of the terms on which Sir Thomas Brews would

consent to the marriage of his daughter Margery is endorsed "A determina<sup>ti</sup>on of Sr Tho. Brews how much he would gyve w<sup>th</sup> his daughter m<sup>r</sup>gery in mariage."

*Ibid.* No. 52 is endorsed "A lfe concerning the Duke of Suff being at Heylesdon, and his mirth at after noone."

*Ibid.* No. 58. A letter announcing the death of the writer's "grandam," and various other family afflictions, is endorsed "dies mortē A P."

It is evident that these memoranda were mere docquets or notes of the contents of the papers. They are all made in one hand—a small clear business-like writing, contemporary or nearly so with the papers endorsed.

Other endorsements consist of brief notes of the following kind, respecting the dates of undated papers :—

E. IV. No. 8 has written round the seal in a rough contemporary hand "A<sup>o</sup> xv<sup>o</sup> mēse noveb<sup>r</sup>."

E. IV. No. 5. Under the direction "A mon<sup>s</sup> J Paston cheualler," we find written in the small clear hand before alluded to : "A<sup>o</sup> E iiij<sup>ti</sup> xij<sup>o</sup>."

E. IV. No. 7. Under the direction "To mas<sup>r</sup> Sr John Paston knyght," we find "A<sup>o</sup> xij<sup>o</sup> E iiij<sup>ti</sup>."

E. IV. No. 50. In the similar place, the letter being dated the 21st March, the annotator has added the name of the writer, and the regnal year : "Custaunce Raynford a<sup>o</sup> xvij<sup>o</sup>."

The paper last-mentioned gives us, on the front of it, an instance of another description of annotation. Immediately under the signature, we find the following memorandum :—"Lrā illius p quā J. Paston mīf ac Bacchalaureus fuit filiam."



Other examples of annotation by which the writers are identified, are not unfrequent, for example :—

Rich. III. No. 1. Elizabeth Browne, the writer of the original of which this paper is a copy, is thus described: “Elizabeth fit Wiſſi Paſton Juſtiċ pmo nupř Ro. Ponyngē miſ ac poſtea Georgio Brown’ miſ vt p; infr; niſi idem Wiſſus hui ij filias uni<sup>o</sup> nōis.”

Hen. VII. No. 15. The writer is thus identified. “Lřa Wiſſi Paſton fit jun<sup>o</sup> Johis Paſton ařĩ ac ſe<sup>r</sup>vien’ Comitē Oxoř.”

And again—

*Ibid.* No. 13. “S<sup>r</sup> John Paſton vice Admyrall put p; infra.”

In all these cases it is clear that there was nothing in the slightest degree approaching to falsification. Such memoranda simply constitute that useful description of annotation likely to be made by a person of methodical character, who was going through the papers with the desire of ascertaining, perhaps for some legal purpose, what were the subjects and whom the persons to whom they related.

It may be right to add, lest it should be thought that the fact was lost sight of by the Committee, that besides these contemporary memoranda, there are various other notes written upon these papers in several hands-writing of the last and present century. These are not of a kind to which any one could for a moment attribute the character of interpolation. One of them, written in a hand of the beginning of the last century, is an identification derived from Newcourt’s Repertorium of Sir John Kendal, prior of St. John’s of Jerusalem, writer of letter No. 34, Hen. VII., as having held that office from 1491 to 1500; another is a note from Stowe’s Annals, upon Perkin Warbeck, signed “B. Yarm<sup>o</sup>. 1760;” and in the right-hand lower corner of the same document there occurs a kind of monogram formed from a combination of the capital letters T and B. The Committee have been informed by Charles John Palmer, Esq., F.S.A., that these initials and the note above-mentioned indicate Thomas Barber, an antiquarian collector, and friend of Martin of Palgrave and Ives, who was an officer of customs in Great Yarmouth for many years during the last century, and died at that place on 1st November, 1785, aged 66.

All the remainder of these modern notes, which are very numerous, are believed to be in the handwriting of Sir John Fenn. They relate in general to the dates of the several papers, they state any facts used in reducing the date to its proper year, month, and day, describe the paper mark, and give brief notes of the leading facts mentioned in the letter. One example will suffice :—

Letter No. 25 Edw. IV. is dated "at Norwyche the x day of Octob. a° xv° E iiij<sup>th</sup>." Sir John Fenn's notes are as follows:—"Norwich, 10 Oct<sup>r</sup> 15 E. 4, 1475. Paper mark, wheels, &c. Advice to Sir John concerning Caistor. Lady of Norfolk near her time. J. Paston sick. Recommends warmth to Sir John. His mother desires his return."

Sir John Fenn has also marked the letters in pencil as having been "copied and noted. J. F."<sup>a</sup>

Finally, on this part of the subject, many of the letters bear on the face of them a mark which may be described as a Cross of St. George, within a rectangle, with the initials "F. B." This was a mark made by the Rev. Francis Blomefield, the historian of Norfolk, upon papers that passed through his hands. In his day these Paston Letters formed part of the Norfolk collections of Peter Le Neve, which remained in the possession of Martin of Palgrave, "all which (remarks Blomefield in the preface to his first volume, published in 1739,) I have the perusal of." Many references are made to the Le Neve MSS. in the History of Norfolk, especially for genealogical purposes. The Fastolf Inventory was published in the *Archæologia*, vol. XXI., p. 238, from Blomefield's copy of one of these papers: and the extracts from the Household Books of the Lestranges, printed in vol. XXV. pp. 411-569, were derived from the same source. Some others of the Paston Papers, letters of a similar character to those under examination by this Committee, came into the possession of Mr. Douce, and passed, among his MSS., to the Bodleian Library. Among them, as the Committee are informed, there are several which bear this Blomefield mark.

VI. Having thus arrived at a conclusion as to the genuineness of the papers, and also as to the absence of interpolation, the Committee proceeded to consider in what manner the several gentlemen engaged in the preparation of vol. v., and in its correction whilst passing through the press, had executed their work. In dealing with this part of their inquiry, the Committee assigned a portion of the labour of collating the 112 papers which are printed in vol. v., and occupy 449 pages, to the several members of the Committee; and ultimately the whole volume was collated by the following gentlemen:—

Mr. Perceval collated those of the original letters which are printed between pp. 1 and 43 of vol. v.

\* In conformity with the methodical character of Sir John Fenn, this noting seems to have been made as the various portions of the work it indicated were completed. When a letter had been copied, he wrote upon it, "Copied," on one line, and J. F. under it. When the noting had been completed, he added after the "Copied," "and noted." Instances occur of "Copied," and "Copied and," the noting never having been completed, and "noted" therefore never added.



Mr. Bond, those between pp. 44 and 81.

Mr. Bruce, those between pp. 82 and 115.

Mr. Franks, those between pp. 116 and 157.

Mr. Burt, those between pp. 158 and 195.

Mr. Hamilton, those between pp. 196 and 241.

Mr. Burt, a second portion, between pp. 242 and 279.

Mr. W. Hardy, those between pp. 280 and 303.

Sir Frederic Madden, those between pp. 304 and 341.

Mr. Merivale, those between pp. 342 and 369.

Mr. Nichols, those between pp. 370 and 395.

Mr. Perceval, a second portion, between pp. 396 and 417.

Mr. Walford, those from p. 418 to p. 449, which is the end of the papers printed in the volume.

Each collator made a written report to the Committee on the results of his collation, and these separate reports are now presented to the Council.

After full consideration of the several matters suggested in them, and the prosecution of such further inquiries as have arisen out of these reports, the Committee are of opinion ;—

That the several works of transcribing the original papers, modernising the orthography, and printing, were all performed with entire good faith, and with an obvious intention and desire on the part of the several gentlemen who took shares therein to publish these documents with complete fidelity. In spite of some inaccuracies, which will be fully noticed hereafter, this opinion is emphatically pronounced by all the collators who have drawn any general conclusions from the parts which they have examined. Mr. Perceval states that, so far as his collation goes, he finds “marks of conscientious care, great intelligence, and commendable accuracy.” Mr. Bond considers the system of publication to be highly judicious, and that it proves Sir John Fenn’s appreciation of a scrupulous exactness in the work he undertook to have been rather in advance of his period. Mr. Bruce remarks that the general impression he has received from the collation is, that the difficulties of the work, both in transcribing and correcting the press, were considerable ; and that the several persons concerned in these operations designed to print the papers with exactness and accuracy. Mr. Burt attests that a perfectly *bonâ fide* rendering of the original letters was given by the transcriber, that he was fairly competent for the work, and that Sir John Fenn understood his work better than the copyist. Mr. Hamilton alludes to the difficulty of the old language and writing, and expresses himself quite satisfied with

the honesty and care of the several editors. Mr. Hardy has no hesitation in declaring his judgment and belief to be, that the letters and materials are authentic, and that they are well and honestly edited. Sir Frederic Madden, after pointing out various mistakes, observes that they are of such a nature as to prove the entire good faith of the editor, adding that the original letters speak for themselves. Mr. Merivale adds his testimony to the apparent honesty and carefulness with which Sir John Fenn performed his office. Mr. Walford remarks that neither in the original letters nor in the copies printed has he met with any indication or trace of intentional falsification, or of any dishonesty of purpose.

VII. Proceeding now to the consideration of the inaccuracies which have been brought to light by collation, the Committee would remark that it was to be expected that inaccuracies would be found. No printed book which professes to represent old documents is free from inaccuracies; and although a very great improvement has taken place in that respect since the publication of the Paston Letters (principally the result of the introduction of type which represents the contractions usual in early documents), yet even now the work of the most careful editors and the best transcribers is too often found on collation to contain mistakes—mistakes committed by all the several persons through whose agency such books are produced, mistakes of the transcribers, mistakes of the printers, and mistakes of the editors. The inaccuracies which creep into this particular description of literary labour through these various channels, too often baffle the aspirations after accuracy even of the most conscientious editors.

But, besides these common and ordinary channels of inaccuracy, there existed several peculiar misleading causes in the case of the publication of vol. v. of the Paston Letters.

1. It is not at all clear that the copy found by Mr. Serjeant Frere, and from which the volume was printed, was fully prepared for the press. Sir John Fenn's words, before quoted, are that when he learned that he was likely to be appointed sheriff, "I employed," he says, "much more of my time than usual on the work, that I might complete the most material parts of it before my appointment." Under these circumstances he appealed to the consideration of any of his readers who should discover marks of haste or inattention in the latter part of the volume. It is obvious, from his subsequent letter, before quoted, that he continued his labours up to the 27th September, 1793, and that he then thought there remained work to be done which would last until the following summer;—before the arrival of which he died. Serjeant Frere also, as we have already mentioned, speaks of



having observed in the manuscript from which he printed, what appeared to him to be obvious mistakes, or inadvertencies, which he took upon himself to correct. From these circumstances it may be inferred that the manuscript awaited some further revision on the part of Sir John Fenn, which was perhaps postponed to some anticipated period of leisure, or to the time when he should receive the printer's proofs.

2. This particular volume had the disadvantage of having been put together by Sir John Fenn when his eyesight was considerably impaired. The portrait prefixed to vol. v. exhibits difficulty of vision. Mr. Dalton states that Sir John was near-sighted; he himself remarks upon an increasing weakness or imperfection of sight, which at the time of the preparation of vol. v. had advanced so far as to disable him from reading by candle-light. When taken in connection with his slight attack of paralysis in 1791, and his sudden death by another attack in 1794, it may be inferred that the infirmity was something more than mere nearness of sight, and that it ought to be reckoned among the causes likely to produce mistakes in dealing with a number of MSS., many of which are in general character extremely alike.

3. This volume was printed by a very respectable printer, who printed the Quarterly Review for many years, and was probably introduced to Mr. Serjeant Frere by the late Mr. Murray, the publisher both of the Quarterly Review and of the fifth volume of the Paston Letters. The work does not contain any example of the employment of type representing the ordinary contractions in use in MSS.; and it may be inferred, therefore, that the printer did not possess such type (a thing not at all unusual at that time) nor had among his workmen any of those skilled compositors who now use the record type with great general accuracy.

4. Mr. Serjeant Frere laboured under the great disadvantage of not having had the original papers to refer to, nor much experience, as the Committee believe, in the correction of the proofs of such documents.

From these circumstances it might have been inferred beforehand that inaccuracies would be discovered, and that they would be chiefly found in Mr. Dalton's, or the left-hand version, that which contains the contracted words and the old spelling.

Such turns out to be the case. There is a considerable number of inaccuracies; the number is far larger in the left-hand version than in the right; and it not unfrequently happens that words mistaken in the former version are given correctly in the latter.

VIII. Upon analysing these inaccuracies we find that one large division of them, perhaps the largest, has arisen out of the imperfect way in which the printed copy represents the contractions of the manuscripts. A few examples will show how this has operated.

The word *that* when contracted is represented in these MSS. in two ways, sometimes by the Anglo-Saxon character termed the thorn with the addition of a letter *t*, thus: “*þt*,” and sometimes by a *y* with the addition of the *t* raised above the line, thus: “*y<sup>t</sup>*.” The printer not having any type to represent the thorn, used a “*y*” in its place, so that the word *that* whenever contracted in the printer’s copy always stands “*y<sup>t</sup>*” in the printed book. So far it was the best arrangement possible, and although it did not represent the MS., inasmuch as it did not indicate the use of the thorn, it expressed the meaning of the MS., and consequently could scarcely be termed a mistake. But the same letters *y* and *t*, when placed together upon a line thus: “*yt*,” are continually used in the MSS. to represent the pronoun *it*. In the printed book, the difference in meaning arising out of the difference in position has been overlooked, and “*þt*” “*y<sup>t</sup>*” and “*yt*” are all represented in one way. The result is that—

I wold vndyrstond how *yt ys*, *reads* in the printed book, I wold vndyrstond how *y<sup>t</sup> ys*; I wot *yt welle*, *reads* I wot *y<sup>t</sup> well*; *yt ys told me*, *reads* *y<sup>t</sup> is told me*; whedyr *yt be don or nowt*, *reads* whedyr *y<sup>t</sup> be don or nowt*; be cause *yt ys ffar* to *y<sup>e</sup> chyrche*, *reads* because *y<sup>t</sup> ys far* to *y<sup>e</sup> chyrche*.

These five examples occur in one letter No. 17 of Edward IV., printed at p. 82 of the volume under examination, and the same thing runs throughout the volume, whenever the pronoun *it* is spelt “*yt*,” which is not however so often as the instances quoted from this letter might lead one to infer.

In all the cases occurring in No. 17, Sir John Fenn’s, or the right-hand copy, is printed accurately “*it*.”

The absence of a type to represent the thorn has in some cases led to very curious results. Thus in letter No. 8, Henry VII., we read in the printed book:

“Hys hyghnes wull not as *zytte* put you to ony *fury~* labour or charge.”

In the original the word “*fury~*” is simply “*furþ<sup>9</sup>*,” that is, further.

In this case it will be observed that there occurs in the printed book something like an example of a contract type, but Mr. Nichols has informed the Committee that the mark at the end of “*fury*” is merely the common type for a circumflex “*~*,” set up so as to follow after the letter to which, in some cases, it almost looks as if it were attached. In this instance the circumflex is made to do duty for the contraction for “*er*,” in many other cases it stands as a substitute for the line



over a letter which indicates an omitted "m" or "n." There are however many cases in which that line is not attempted to be represented at all, and in which mistakes have arisen accordingly. Mr. Merivale has pointed out one of these cases, in which "no other remedy" ought to have been printed "nō," *i.e.*, "non other remedy."

In like manner, the absence of any representation of the contraction *e* for the final *es* as the termination of the genitive singular and of the plural, has often led to mistakes. In the majority of cases it is represented by a single *s*, or an *s* following an apostrophe; but in many places it is omitted altogether, which converts plural into singular, or has the effect of making it appear as if our ancestors had no distinctive termination for the genitive case. Sir Frederic Madden has pointed out that there are instances in which *coste* and *comawndmēte* are printed *cost* and *comawndment*, and in the Letter No. 17 Edward IV., before quoted, there are several instances where the writer laments the insecurity of her "plegge" *i.e.*, her sureties, which are printed simply "plegg."

Instances occur also where the like interference with the sense arises from the absence of the contraction for "er." Sir Frederic Madden quotes an instance in which *prisoneres* is converted into *p'sones*, which may stand for parsons, persons, or prisons. Mr. Hamilton gives an example of "y<sup>e</sup> for" printed "ye for." Mr. Bruce of "ou<sup>3</sup>," over, which is printed "on;" and Mr. Burtt states an instance in which, a word ending in "t," the printer, having nothing to represent the contraction, omitted the letter as well as the contraction, and thus reduced "Water" to "Wa."

These instances sufficiently exemplify the large class of inaccuracies which arise from the want of type to represent contractions; many other inaccuracies consist of the ordinary printer's blunders—the substitution of one letter or one word for another, in consequence of misreading the copy. Mr. Perceval has pointed out two cases, which seem to be of this kind. In one, the word "clene" has been printed "clere;" in the other "myn oncyll w cleym," has been printed "myn oncyll to Cleym"—the "w," the initial letter of "William," having been misread "to." A long list of other examples of this kind could be quoted, but the nature of such mistakes is as well known as the frequency of their occurrence, their origin being generally to be found in the haste and want of care of the writer of the copy.

A third description of inaccuracies consists of instances of clear misreadings of the MSS., in which both the left-hand and right-hand versions agree. These cases are not numerous. Mr. Burtt has pointed out two examples. In letter

No. 42, Edward IV., "lillys," the name of a manor, is printed "billys," and in the next letter a grant is stated to have been made "w<sup>t</sup> hys dissent," instead of "hys assent." Mr. Bond has also cited a curious instance in Letter 13, Edward IV., where the proverbial or popular phrase "bear the cup euyn," has been read "bear the cup durn," and has been "stigmatized" by the editor "as inexplicable."

The inaccuracies hitherto noticed have been merely literal; another class consists of the omission of several words from the left hand-version. Mr. Franks points out an instance where the conclusion of a letter "yo<sup>r</sup> sone & humbyll seru<sup>ant</sup>" is omitted in the left-hand version, but supplied in the right. A similar omission of "Be your' suant," occurs in a letter, No. 47, Edward IV., examined by Mr. Hamilton. These and other similar cases are clear mistakes, but if we are to take this volume as representing the general practice of the editor, he certainly had notions upon the subject of making additions to his MSS. and omissions from them, which are not at all in accordance with the scrupulous accuracy in those respects of the present day. For example, he adds signatures to letters which have none in the originals. In one instance (No. 42, Edward IV.) where the final line of a letter has been partly cut off in severing the written portion of the sheet of paper from the unwritten remainder, he has added the signature, in all probability rightly, but without stating the circumstances under which it was appended.

Mr. Bond has pointed out a case in which half a letter has been omitted without notice (No. 11, Edward IV.), and Mr. Walford a similar example of three lines (No. 38, Henry VII.). Mr. Bond, Mr. Hardy, Mr. Merivale, and Mr. Hamilton have also given contemporary endorsements which are not mentioned in the printed book. In these cases there was evidently no intentional deception. The editor thought such things within his discretion, and noticed them or not, just as he thought them important or the contrary.

The last class of inaccuracies which will close this long and tedious detail would, if it were numerous, be probably the most important of all. It consists of cases in which words, which do not occur in the original, appear in the printed book. Mr. Hamilton has pointed out an instance in which a direction of a letter (No. 47, Edward IV.) "To the ryth worchypful Ser John Paston knyght" has been supplied in old spelling, part of which, "ryth worchypful Ser," has been derived from the commencement of the letter. Mr. Walford has pointed out that, in the instance of No. 38, Henry VII. p. 438, a heading of "Est Bekh'm thadward" has been gratuitously given to the document. But the most extraordinary case of this kind occurs in a letter examined by Mr. Perceval, No. 3, Edward IV. This letter



is faulty in several other particulars; for example, "feg" is inserted in the left-hand version, and rendered "figs" in the right hand without any corresponding word in the original. A probable explanation may be given of this insertion, but several other inaccuracies in the same letter are quite inexplicable; and they are closed by the addition of the following passage at the conclusion of the left-hand version: "I warn you kepe y<sup>is</sup> lett<sup>r</sup> clos and lese y<sup>t</sup> not rather brenyt;" or, as it stands in the right-hand copy, "I warn you keep this letter close and lose it not, rather burn it."

There is nothing in the original to warrant any part of this sentence, nor to lead to an explanation how it came to be added to the copy. In substance and language the addition looks as if it might have been found in some one of these original letters, and the only clues to the origin of its purposeless addition that have occurred, or have been suggested to the Committee, are, that it was written upon a separate piece of paper, which has disappeared; or that Sir John Fenn, misled by his defective vision, transferred the passage in mistake from some other letter which has not been published, nor been seen by the Committee.

In dealing with all these inaccuracies, whether they are explainable or not, it is important to bear in mind that all the gentlemen connected with this publication were persons of unquestionable character.

Of Mr. Serjeant Frere it is unnecessary to say a word. His position in his profession, and in the University of Cambridge, places him far above all doubt or suspicion.

Mr. Almack, in the letter to which we have already alluded, has stated that Mr. Dalton was a gentleman well connected, highly educated, and remarkable as much for inflexible integrity as for talent and strength of mind. George Alfred Carthew, Esq., a Fellow of this Society, and who now in his professional character represents the office in which Mr. Dalton served his articles, has given similar information to the Committee. After leaving East Dereham, Mr. Dalton passed a long life at Bury Saint Edmund's, a part of it in the practice of his profession. He held several public offices; was confided in by persons of the highest station; and died on the 2nd October, 1860, in the 94th year of his age, universally respected and esteemed.

Testimony equally emphatic has been given to the character of Sir John Fenn. From an advertisement containing notices of his life, prefixed by Serjeant Frere to the fifth volume of the Paston Letters, we gather that, although possessed of only a moderate fortune and descended from a family which had fallen into obscurity, by a correct and regular discharge of duties, by scrupulous punctuality

and veracity, by imperturbable temper and manly simplicity of character and manners, combined with an unenthusiastic religious sobriety, he acquired considerable influence in his native county. He was early placed in the commission of the peace, was afterwards appointed a deputy lieutenant, was knighted on the 23rd May, 1787, and finally served the office of high sheriff in 1791.

His connexion with this Society, into which he was elected in the year 1771, fostered his taste for historical inquiry, and brought him into acquaintance and correspondence with Grose, Gough, Craven Ord, Edward King, and other men of note in antiquarian studies. He made two communications to this Society. The first, which was read on the 23rd Nov. 1780, comprised memoirs of the life of Thomas Martin, of Palgrave, with an account of the disposal of his collections. This remains in MS. in our library, No. 33. His second communication was made on the 30th November, 1780, and consisted of observations upon the murder of William de la Pole, Duke of Suffolk, in the year 1450. This paper was founded upon two of the Paston Letters, copies of which were, at this time, entered upon the minutes of the Society, vol. xvii. pp. 181, 193, seven years before any of them were given to the public.

He also communicated to this Society three tables, exhibiting the state of this Society from its first rise in 1572, down to the year 1784; with the addition of various useful "Observations and Queries," being suggestions for the improvement of the publications of the Society, most of which have been carried out. These lists were published by the Society in 1784, together with an index, also compiled by Sir John Fenn, of the prints published in the "Vetusta Monumenta" and otherwise, from 1717 to 1784. Such useful works indicate the compiler's regular methodical turn of mind. When he entered upon reflection or observation, his mode of expression was verbose and grandiloquent, and it cannot be doubted that in manner he was formal and ceremonious, but in classifying or otherwise dealing with facts, no one could exceed him in laborious precision and conscientious accuracy.

The Committee find themselves totally unable to report in what degree the several persons engaged in the production of this book are responsible for its various inaccuracies. It was hoped that the Committee might have obtained an inspection of the copy sent to the press by Serjeant Frere, but Mr. Frere has informed the secretary that he is not aware that he has it in his possession. Under any mode of editing with which persons accustomed to this kind of literary work are now acquainted, a very great many of the inaccuracies which have been described would have disappeared in the correction of the press. But the situation of



Serjeant Frere was in this respect peculiar. What arrangements he made for the correction of the proofs the Committee do not know. The probability is that he entrusted the work to some one who was not entirely competent, and if it be further supposed that Sir John Fenn had not completed his task of collation or comparison of the transcripts with the originals, the wonder is not that there are so many inaccuracies, but that they are not more numerous and more important.

XI. The conclusions at which the Committee have arrived upon the whole inquiry are:—

1. That the original letters are unquestionably genuine.
2. That they remain undefaced, uninterpolated, and untampered with.
3. That the printed book contains a considerable number of literal and some verbal inaccuracies, but that in the hands of an intelligent and competent reader, it will be found to represent the original sufficiently for all general purposes, although of little authority in matters of orthography and grammatical inflexion.
4. That there was no want of good faith in any of the persons engaged in its preparation or publication; but that each of them, according to his degree of competency and ability, and the means of obtaining accuracy at his command, and according also to the mode of publishing such documents then prevalent, endeavoured to do what was right.

## APPENDIX.

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### *Reports of the Collators of the Fifth Volume of Paston Letters.*

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#### I.—LETTERS I. TO VIII. EDW. IV., AND XXV. TO XXXII. HEN. VII.

I have collated the following original Letters with the text of the 5th volume, printed by Serjeant Frere ; viz., Fasciculus I. Letters temp. Ed. IV. i. to viii. incl.; Fasciculus XII. Letters temp. Hen. VII. xxv. to xxxii. incl.

The two printed texts, the one in the ancient and contracted, the other in the modern and expanded orthography, appear to me to be independent versions. I am led to this belief from the circumstance that mis-readings or mis-prints occurring in the former, are not unfrequently corrected in the latter version.

The transcriber or editor of the contracted text (or fac-simile) appears not to have been thoroughly master of the import and significance of some of the contractions used in these letters, as well as in other documents of the same period. In particular he has constantly neglected the mute 'e' final, when indicated by a recurved upward stroke, and has as constantly rendered the sign of the ancient plural termination of substantives in 'is' or 'ys' or 'es' by 's' only: while, in consequence of the imperfect appreciation of the meaning of the contractions or *nexus*, they are not always reproduced in fac-simile with such exactitude as might be expected at the present day of an accomplished palæographer editing such a text with its contractions.

The errors (if so they may be called) due to this source scarcely ever affect the sense of a passage, but are occasionally of philological importance.

The literal accuracy of the fac-simile is in other respects very great, and will I think appear almost surprisingly so, when it is considered that the "posthumous editor" of the 5th volume had no opportunity of collating his proofs with the original letters.

That portion of the extended text which has fallen to me to examine, seems also to have been prepared and printed with great skill and care. On the whole, I think I may safely say that, so far as my collation goes, the work exhibits all the marks of conscientious care, great intelligence, and commendable accuracy.

A list of some errors which I have noticed (not being mere errors of spelling) is subjoined :



EDWARD IV.

LETTER I.

Page 6, line 2, for *clere* hole, read *clene* hole. The modern text reads "clean" rightly.

LETTER III.

Page 12, line 7 from bottom, for

"I wolde that *he* were hens in haste,"

read . . . . . *I* . . . . .

(perhaps *J* for *Iohn Pampynge*).

Page 14, line 8, for "*dm~ a riale*," read "*deĩ a riale*."

Page 14, line 9, for "*w<sup>t</sup> swgr feg and dats*," read "*w<sup>t</sup> fwg<sup>o</sup> & dat<sup>e</sup>*."

The word *fwg<sup>o</sup>* (sugar) is ill-written, and perhaps in the first instance was mis-read "*fe<sup>o</sup>*" (taken for figs); and, though afterwards the word was corrected and the correction inserted, yet the blunder remained. This error is in both texts.

Page 14, line 18, for "*r'ysonys of Coriint*" read *Corens*; for "*grenys and comfytys of ych of these send me y<sup>e</sup> p'ce of a li and yf*" read "*grenys of ych of these send me y<sup>e</sup> p'ce of ych of these and yf*" (the words repeated *per incuriam scribæ*).

Same letter, at the end :

Page 14, the words after "on St. Leonard's eve," do not occur at all in the original. (The words are, "I warn you kepe y<sup>is</sup> lett<sup>r</sup> clos, and lese y<sup>t</sup> not rather brenyt.") "By yowy<sup>o</sup> mod<sup>o</sup>" concludes the letter, as in the printed copy.

LETTER IV.

Page 18, line 18, for "*myn oncyll to Cleym in Castr*," read "*myn oncyft W. cleyrn*," &c. The modern version rightly has "William's claim."

Page 20, line 10, be shet y<sup>e</sup> bolt; for *bolt* read *bote* or *bete*.

Page 20, line 25, for "*ther lyvys*" read "*her lyuys*."

LETTER VII.

Page 37, line 6, "*ferforthe*," wrongly paraphrased "forsooth" in the modern text.

Page 38, line 17, for R. C., initials of a name, read R. T.

LETTER VIII.

Page 42, line 7, for "*forwell*," read *fordeft*.

Page 42, line 9, "*on*" for "*one*," has been misread in the fac-simile, as "*sũ*" for "*some*." The modern text has "*one*," rightly.

## HENRY VII.

## LETTER XXVI. (A Draft or Copy.)

Page 398, line 6, for "my right s<sup>unt</sup>," read "my right welbeloved fu<sup>ant</sup>:" the modern text inserts "*well-beloved*" rightly.

The initials E. N. given in the printed copy, as at the foot of the letter, are not in the original.

## LETTER XXXI.

Page 412, line 2, for "Heny" read "Herry"—"Henry" in modern text.

Page 414, line 3, for *really* read *rially*.

CHAS. SP. PERCEVAL.

Jan. 9, 1866.

## II.—LETTERS IX. TO XVI., EDW. IV.

In compliance with the wish of the Council of the Society, I have collated eight letters, numbered IX. to XVI., in the fifth volume of Sir John Fenn's work, with their originals, and have to state the following results:—

The system of publication by transcripts representing the spelling and the contractions of words used in the originals, accompanied with distinct copies exhibiting the letters in the modern form, in orthography and punctuation, appears to me to be highly judicious, and proves Sir John's appreciation of a scrupulous exactness, in the work he undertook, to have been rather in advance of his period. But the execution of the plan has not been carried out with entire success.

The direct transcripts are open to several objections:—

1. The forms of contraction are not correctly represented. The syllables *par*, *per*, *pur*, *pre*, and *pro*, are, for instance, uniformly represented by a *p* with a superior *r*, though the distinctions of the several forms are carefully observed in the originals.

2. The contractions are frequently and purposely omitted, particularly when they occur at the end of words complete without them, according to modern orthography; as "hath" for "hath'," "evyll" for "evyllt," "lateward" for "lateward<sup>e</sup>." And in some instances the sense is affected by the omission; as "moodr" for "moodr<sup>e</sup>" (mother's).

3. Sometimes a liberty is taken with the original in extending a contraction, as in representing the genitive of a noun by an "s" with an apostrophe, as "Harsett's" for "Harsett<sup>e</sup>," "Towneshend's" for "Towneshend<sup>e</sup>."

4. The marks of punctuation are almost always neglected—either omitted, or wrongly inserted, or misrepresented; and the sense of passages is sometimes obscured by this defect.

5. Capital letters are used, without regard to the authority of the originals; and double letters are disregarded—as "of" for "off."

6. Erasures are unnoticed; and interlineations not indicated as such.



7. Compound words divided in the originals are run together in the transcripts. The distinct words "*never the less*" are written "nevertheless" in one; "*in to*" is written "into;" and sometimes a single word in the original is divided in the transcript, as "*shal be*" for "shalbe," "*Lee is*" for "leeis."

8. Though it was evidently the intention to observe the distinction between the "*u*" and "*v*" found in the originals, the exception in practice is so frequent that the transcript cannot be depended on in this particular.

9. The letter "*y*" is invariably substituted for the Anglo-Saxon *þ* in the contractions for "the," "this," &c.

10. Contemporary indorsements are sometimes overlooked.

The transcripts, with these qualifications, may be pronounced reasonably accurate; and where they have fallen into error, it is to be observed that they are almost always set right in Sir John Fenn's modern renderings. I may notice, however, one instance in which Sir John has been unable to correct a misreading of the transcriber, though he remarks upon the obscurity it occasions. It occurs in the 13th Letter. A saying is quoted which the transcriber had read "Ber the cuppe durñ." Fenn copies the misreading "duñ," and in a note stigmatises it as inexplicable. He failed to hit upon the correct reading, "cuyñ" for "durñ"—"Bear the cup even."

I should call attention to the fact, that more than half of the contents of Letter XI., as they appear in the original, have been dropped in the printed copy; and that without any notice or mark of omission.

As a means of exhibiting the degree of accuracy found in the transcripts, I subjoin a list of errors—apart from neglected contractions at the end of words—detected in the eight letters I have collated.

#### LETTER IX.

For "mekly" read "mekly."  
For "lickyd" read "lickyd."

For "relessys" read "relessis."  
For "seyd" read "sey." [*Blunder in orig.*]

#### LETTER X.

For "pore" read "poore."  
For "cossyn" read "cosyn."  
For "you" read "yow."  
For "nowght" read "nawght."  
For "lyckyth" read "lyekyth."  
For "Haydons" read "Heydons."  
For "you" read "yow."  
For "Harsett's" read "Harsette."  
For "pewer" read "power."  
For "into" read "in to."

For "shal be" read "shalbe."  
For "howse" read "hawse."  
For "gate" read "grante."  
For "Annoneyacyon" read "Anuncyacyon."  
For "xiij." read "xiij°."  
For "yong" read "yonge."  
For "hys doughter" read "on of hys doughtyr."  
For "Berney" read "Barney."  
For "Calthorp" read "Calthorpp."

## LETTER XI.

For "recomend" read "recomand."  
 For "unto" read "on to."  
 For "tower" read "tour'."

For "yitt" read "yit."  
 For "pray" read "preye."  
 For "haddÿ" read "hadde."

## LETTER XII.

For "Mychalys" read "Mychaelys."  
 For "Koket" read "Kokett."  
 For "thatt theer" read "than theer off."  
 For "y<sup>t</sup>" read "yt."  
 For "mat'ir" read "mat<sup>9</sup>rs."  
 For "played" read "plyed."

For "feoll" read "fooll."  
 For "nor" read "ner."  
 For "pecs" read "peeç."  
 For "cost" read "costr'."  
 For "hys" read "thys."

## LETTER XIII.

For "moodr" read "moodrç."  
 For "hossekeper" read "horsekeper."

For "duřn" read "euyn."

## LETTER XIV.

For "Edmund" read "Edmud" (in three instances).  
 For "spek" read "spak."  
 For "deale" read "deele."

For "Lee is" read "leeis."  
 For "syprese" read "sypresse."  
 For "take" read "tak."

## LETTER XV.

For "Margret" read "Margrett."  
 For "apeyrrd" read "apeyryd."  
 For "so" read "soo."  
 For "Townshend" read "Towneshend."  
 For "of" read "off" (commonly here and elsewhere).

For "chevysance" read "chevyshance" (twice).  
 For "chevystie" read "chevyshe."  
 For "hat" read "hate."  
 For "is" read "as."  
 For "messenger" read "massenger."

## LETTER XVI.

For "yow" read "yowe."  
 For "payable" read "payeable."  
 For "spor" read "spor'."

For "purveyed" read "porveyed."  
 For "serteynte," read "serteyntes."

EDWD. A. BOND.

British Museum, 9th January, 1866.

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III.—LETTERS XVII—XXIV., EDW. IV.

I have collated the Letters XVII. to XXIV. Edward IV., printed in vol. v. pp. 82–114.

The variations between the MSS. and the printed book are somewhat numerous, but the great majority are of little importance. Their origin may be traced, in most instances, to one of the three following causes: 1. Mistakes of the copyist in reading his manuscript; 2. Inability of the printer to represent in type the marks of contraction customary in manuscripts; and 3. Failure in correction of mistakes of the press.

An example of each of these several kinds of variation may be quoted from Letter XVII. In a postscript to that letter we read “more than £7 of the money that was paid him was right *on* rusty;” the MS. reads “right ou<sup>o</sup> rusty” “right *over* rusty.” Here the mistake was probably that of the copyist. Again; “Be thys delyu<sup>y</sup>yd” is part of the direction of the same letter; but these words are printed “Be thys delyu<sup>e</sup>red;” the “u” instead of “<sup>y</sup>” resulted from the printer’s want of record type; and the “ed” instead of “yd” was probably a mistake of the press, and should have been corrected by the editor. But, admitting these inaccuracies, no one would read the word as it stands printed otherwise than “delivered.”

Considering the objects of the collation, it seems to me that I shall sufficiently satisfy the requirements of the Committee if I return a note of all the variations between the MSS. and the printed book which convey a different sense. The lists appended to this report have been framed upon this principle.

All the letters I have collated have been printed entire.

The general impression I have received from the collation is, that the difficulties of the work, both in transcribing and correcting the press, were considerable; and that the several persons concerned in those operations designed to print the papers with exactness and accuracy. The occasional failure is principally to be attributed to circumstances connected with the preparation and printing of the volume. Had Sir John Fenn seen it through the press himself, I make no doubt the inaccuracies would not have been so numerous.

LETTER XVII. PAGES 82—95.

Page 82. Inset “(m)” at commencement, before “I gret yow well.”

For “at thys tyme” read “ar thys tyme”

Page 84. For “for the bettyr” read “far the bettyr.”

For “yt” read “yt” (several times)

For “ye prson” read “ye prson”

For “hyr seknes” read “hys seknes.”

For “on rysty” read “ou<sup>y</sup> rysty.”

Page 85. The letter is not signed “Margaret Paston.”

## LETTER XVIII. PAGES 86—91.

- Page 86. For "a<sup>o</sup> xiiij<sup>o</sup>" read "a<sup>o</sup> xiiij<sup>o</sup>."  
 Page 88. For "plegg" read "plegge" (several times)  
           For "fyngŷrs" read "fyngyrs"  
           For "yt" read "yt" (several times)  
           For "2<sup>d</sup>." read "2<sup>s</sup>."  
 Page 90. For "send" read "seyd"  
           For "lyk" read "kyk" [mistake]

## LETTER XIX. PAGES 92—96.

- Page 94. For "Mast<sup>r</sup>." read "the Mast<sup>r</sup>"  
 Page 96. For "yitt" read "yet"

## LETTER XX. PAGES 96—101.

- Page 96. For "non" read "neñ."  
 Page 98. For "wetyng I'm" read "wetyng<sup>2</sup>. Itm'."  
 Page 100. For "Ihe" read "Ihc"  
           For "Calys" read "Caleys"

Old endorsement of contents unnoticed.

## LETTER XXI.

- Page 102. For "known" read "knowe"  
           For "pleas'" read "pleaf"  
           For "seme" read "semeç"  
 Page 104. For "R. Southwell" read "Rc. Southwell."

## LETTER XXII.

- Page 104. For "ye" read "y<sup>t</sup>."  
           For "y' of" read "p<sup>o</sup> of"  
           For "Sym" read "Sym'"  
 Page 106. For "boroeng y<sup>t</sup> of y<sup>e</sup>" read "boroeng off pe."  
           For "nor" read "nop<sup>o</sup>"  
           For "nor" read "ner'"  
           For "y' of" read "p<sup>o</sup> of"  
           For "devyrs" read "deuyr"  
           For "viiij sum'a" read "viiij<sup>s</sup>. suñna"  
           For "nor" read "nop<sup>o</sup>"  
 Page 108. For "prety" read "praty"  
 Direction (page 104) add "menc' maij a<sup>o</sup> xv<sup>o</sup>"



LETTER XXIII.

Page 110, For "wags"	read "wage."
For "Scamond"	read "Beamond"
For "of yowr leyser"	read "iff yowr' leyser"
For "slowe"	read "slawe."
For "on c li"	read "an c li"
For "Ihu"	read "Ihc."

JNO. BRUCE.

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IV.—LETTERS XXV. TO XXXIV. EDW. IV.

In the letters which I have collated, although the fac-simile text is not accurate as to every letter, the spelling has been fairly followed, excepting in the case of contractions, which are constantly overlooked, especially in the final e, es, or ys.

The following mis-readings have been noticed, over and above verbal errors or omitted contractions:—

LETTER XXV.

Page 116, line 6, for "our" read "op<sup>o</sup>," other, as correctly given in extended text.

Page 118, line 7, for "ware" read "wore."

The signature to this letter is P. I. not I. P. (Paston, Junior?).

LETTER XXVIII.

Page 130, line 15, for "ye" read "yt," as correctly in extended text.

line 17, for "avythe," read "owythe," as correctly printed in extended text.

LETTER XXIX.

Before signature, is omitted "yo<sup>r</sup> sone and humbyll seru<sup>a</sup>nt," as in extended text.

LETTER XXX.

Page 138, line 16, for "one," read "an," correct in extended text ; before the signature, same omission as in last letter ; after "J. Paston," "J." (Junior).

LETTER XXXI.

Page 140, line 3, for "Calle," read "Colle."

## LETTER XXXII.

Page 144, last line, for "non," read "nott;" "se" is probably a mistake in original for "be."  
 Page 146, line 7, for "ye," read "yt;" correct in extended text.

## LETTER XXXIII.

Page 150, line 3, for "be," read "so;" correct in extended text.

## LETTER XXXIV.

Page 152, line 20, for "Camberach," read "Camberag'."  
 Page 152, line 24, for "howr bett'," read "howe beit;" as in extended text.  
 Page 154, line 12, for "yt," read "yf," as in extended text.

AUGUSTUS W. FRANKS.

British Museum, Jan. 6, 1866.

## V.—LETTERS XXXV TO XLIV. EDW. IV.

I have examined that portion of the original "Paston Letters" which was committed to me for collation, with the printed volume.

The letters are Nos. XXXV to XLIV inclusive, of Vol. V.

The result of my collation has been to convince me that a perfectly *bond fide* rendering of the original letters was given by the transcriber, and that he was fairly competent for the work. His reading is not quite accurate, chiefly as regards some of the smaller words, and the value and purport of several of the contractions commonly in use seem to have been scarcely understood by him. But, if understood, there was a difficulty in their being represented with accuracy, as no printer was in possession of the requisite type.

As regards many of these variations from the original, the version given by Sir John Fenn is far more correct than the transcript;—showing that it must have been made independent of that transcript, and that the author understood his work better than the copyist.

There is a singular corroboration of this opinion in the first letter which has passed under my hands. In the sentence near the end of the letter, "And, Cosyn, if it please yowe to com to Topcroft, and poynt ye what dey when ye will com, I schalle sende for my Cosyn, &c. to be there the same day," the "&c" following "Cosyn" is omitted in the transcript, but supplied in the modern version. It is an important word in the sentence, interlined in the original over an erasure, and rather obscurely written. It could never have occurred to any one with a copy before him not containing the word, that it ought to be inserted.



The chief literal variations are the following, nearly all of which occur more than once. In the transcript "Henry" is given for "Herry"

"ondyrstand"	for "undyrstand"
"J"	for "I"
"well"	for "wele"
"go on to"	for "go un to"
"conclussyons"	for "conclusyons"
"zow"	for "yow"
"sent"	for "sennte"
"Persse"	for "Peerse"
"lycketh"	for "lyeketh"
"leueng"	for "leveing."

The following are the more important variations, besides that of the "&c."

LETTER XXXV.

Signature "Be yo<sup>r</sup> cosyn Dame Elizabeth Brews;" omitted in the copy, but supplied in the modern version.

LETTER XXXVI.

"gyffe hyr for a m<sup>i</sup> li," rendered "for a m<sup>e</sup> li;" but corrected in the modern version.

LETTER XLI.

The direction "in Calic'," given "in Calic."

"g<sup>o</sup>tre" given "c<sup>o</sup>tre," but correctly extended in the modern version.

"dede & pric'," given "deds and pric," but correctly extended in the modern version.

LETTER XLII.

8th line. The word "I<sup>t</sup>m" omitted before "wher ye thynke," but given in the modern version.

1st line of p. 182, "man" should be "man<sup>r</sup>;" correctly given in the modern version.

3rd line, "Run'm" should be "Runh<sup>a</sup>m."

4th line (on same page), "billys" should be "lillys;" this is also wrong in the modern version.

9th line from end of letter, "can nev<sup>r</sup>," printed "cam."

LETTER XLIII.

In middle of letter, "that I g<sup>a</sup>untyd yow w<sup>t</sup> hys assent," printed in *both* versions "dissent."

The address to Margaret Paston given for this letter does not exist in the original, nor do those for the two letters contained in it, and intended to be sent to "Dame Elyzabeth Brews" and to "John Paston Sqwyer," the writer of the three letters in one. These have been supplied by the transcriber or corrector.

JOSEPH BURTT.

Public Record Office,  
31st January, 1866.

## VI.—LETTERS XLV. TO LIV., EDW. IV.

As one of the members of the Committee on the Paston Letters, I feel quite satisfied with the perfect honesty and general accuracy of the printed literal transcript. I have collated every word of the letters in my fasciculus, and the following are the inadvertencies or inaccuracies which I have noted:—

Page 196, line 3 from foot, for “I most,” read “Item I most.”

Page 199, line 1, for “considering,” read “considered.” (*Mem.* The literal transcript is correct in this place.)

Page 200, line 3, for “yow,” read “yowr.”

## LETTER XLVI.

Page 200, last line but one, for “not,” read “nat.”

Page 202, line 6, for “refrey,” read “resseyue”=receive.

Page 202, line 7, for “y<sup>re</sup>,” read “y<sup>is</sup>,”=this.

Page 202, line 8, for “y<sup>t</sup>,” read “yt,”=it.

Page 202, line 13, for “y<sup>t</sup>,” read “yt.”

Page 202, line 15, for “y<sup>e</sup>,” read “y<sup>is</sup>.”

Page 202, line 23, for “y<sup>t</sup>,” read “yt.”

Page 202, line 25, for “wurchyp and” read “vouchypps pfyte.”

Page 204, line 1, for “ye for,” read “y<sup>e</sup>for”=therefore.

Page 204, line 3, for “y<sup>t</sup>,” read “yt,”=it.

Page 205, line 6, for “them, for as,” read “therefor. As for (me).”

## LETTER XLVII.

Page 207, line 5 (or 7), for “could none have,” read “should none have.”

Page 206, line 5 (or 8), for “trebill,” read “trobil.”

Page 206, line 9, for “zoodknape,” read “goodknape.”

Page 206, 7 lines from foot, for “in is kepyng,” read “in kepyng.” I think the “s” in “is” is part of “k,” and that there is not the word “is.”

Page 206, last line, for “zoo,” read “goo ;” same line, for “swan,” read “swans ;” same line, for “be,” read “ȝ,” (and).

Page 208, line 2, for “be” (first word) read “vs.”

The indorsement of the letter is omitted; it is:—

“Pekok. M̃ Decēb̃ a<sup>o</sup> E iiij<sup>th</sup> xvi<sup>o</sup>.”

“No<sup>a</sup> p wrecco maris ap<sup>d</sup> Wynterton.”

Instead of this they have given “To the ryth worchypful Sir John Paston, knyght.”

Page 210, line 7, for “gwyd,” read “gwyde,”=guides.



- Page 210, line 16, for "me thynk," read "me thynke,"=methinks; and at page 211.  
 Page 210, line 20, for "p'mysed," read "pmysed."  
 Page 214, line 8, for "the," read "thes."  
 Page 215, line 18, for "proposeth," read "purposeth."  
 Page 216, line 7, for "incontinū," read "incontinēt."  
 Page 216, line 5 from foot, for "dysperte," read "dysporte."  
 Page 218, line 7, for "serv<sup>a</sup>unt," read "seru<sup>a</sup>nt,"=servaunt.  
 Page 220, last line but one, for "heys," read "hoys,"=whose.  
 Page 221, also the same word.  
 Page 222, line 1, for "her of I beseche yow to be ye," read "herof I beseke yow be ye."  
 Page 222, line 3, for "all," read "at all."  
 Page 222, line 6, for "Constance," read "Constans."  
 Page 224, line 14, for "buschoyps," read "buschopys,"=bishops.  
 Page 228, line 3, for "Powlys," read "Pawlys."  
 Page 228, line 8, for "y<sup>t</sup>," read "y<sup>o</sup>,"=there.  
 Page 228, line 15, for "and," read "dud."  
 Page 228, line 19, for "ze," read "ye."  
 Page 230, for "of y<sup>r</sup>" read "of y<sup>o</sup>"=off ther.  
 Page 230, line 17, for "Aby vj for on," read "A by bi for eū"=all be by for ever; *i. e.*, all be put by their advantages for ever.  
 Page 230, line 20, for "rayn" read "ruyn."  
 Page 230, line 22. "nor" read "neū"=never.  
 Page 232, line 2, for "Falstolf" read "Fastolf" (which was indeed the name).  
 Page 232, line 18, for "Barker" read "Parker."  
 Page 232, last line of paragraph, for "Corpus crysty" read "Corpus Crysty Even."  
 Page 236, line 3, for "litynge" read "letyngē."  
 Page 236, line 4, "ferthirmor" read "ferthermor'."  
 Page 238, line 2, for "gyndenesse" read "gyudenesse,"=goodness not kindness.  
 Page 239, line 2, for "kindness" read "goodness."  
 Page 238, line 3 from foot, for "yt" read "yt,"=it.  
 Page 240, line 4, for "yt" read "yt,"=it.  
 Page 240, line 9, for "yowre" read "yow."

This is all I have to remark on the letters you kindly confided to my strictures, but I cannot conclude without alluding to the difficulty of the old language and writing, and again expressing myself quite satisfied with the honesty and care of the several editors.

HANS C. HAMILTON.

Public Record Office.

## VII.—LETTERS LV. TO LXIV. EDW. IV.

Having completed my collation of the second *fasciculus* of the Paston Letters (Nos. LV. to LXIV.), I have but little to add to my previous remarks.

I have found the same slight literal variations which I have already noticed, and the same slight deviations as regards contractions, usually corrected in the modern version.

The more important variations in the transcript are as follows:—

## LETTER LVII.

“Añ” for “Amen,” omitted at the end of the letter; supplied in the modern version.

## LETTER LXI.

Page 264, near the end, “Waþ whechlythe” printed “wa’whechlythe;” corrected in the modern version.

“w<sup>t</sup> me” omitted in a sentence on page 268, supplied in the modern version.

## LETTER LXII.

Page 268, “of” omitted before “Ely;” supplied in the modern version.

“you” omitted in another part; supplied in the modern version.

## LETTER LXIII.

Page 272. The word “be” inserted before “klenly” (eaten away).

## LETTER LXIV.

Page 274. At the end of the letter, the word “and” inserted after “moste.”

## LETTER LXI.

Page 264, line 1. The word “beheffe,” or “behoffe” (for “behalf,” or “behoof”), is given “behesse,” and rendered “behest” in the modern version.

The edge of LETTER LXIII has been eaten away (by rats, I think) in two places since publication, by which a few letters have been lost in eight or nine lines.

JOSEPH BURTT.

## VIII.—LETTERS LXV. TO LXX. EDW. IV.; I. EDW. V.; AND I. RICH. III.

I beg leave to submit to the Committee the following observations, being the result of my collation of the originals with the copies of the letters printed in the 5th volume of Sir John Fenn’s Collection of the Paston Letters, pp. 280—307.



I. Page 280, LXV.—Letter from William Paston to the farmer of his manor of Harwelbury, dated 24th Feb. and referred by the Editor to the 19th of Edw. IV. 14<sup>7</sup>/<sub>80</sub>. Holograph.

- Corr. Page 280, line 4, "liveth" for "leveth."  
 „ „ 5, "govin" for "govyn."  
 „ „ 5, "ye" for "ye" (*i.e.*, *the* for *ye* or *you*).  
 „ „ 20, "said" for "seid."  
 „ 282, „ 2, "xxiiij" for "xxiiij<sup>th</sup>."  
 „ „ 3, "Februar" for "Februari."

I think also the occasional substitution of *J* for *I* is not warranted by the original. The letter is the same throughout, and may always be read *I*.

II. Page 282, LXVI.—Letter from E. Paston to his brother, John Paston, Esq. Holograph.

- Corr. Page 282, "J" for "I," and so in all the letters collated.  
 „ line 2, "Bolt" for "Boolt."  
 „ 284, „ 1, "halth" for "helth."  
 „ „ 2, "from" for "ffrom," *i.e.*, *From*.

The frequent omission of marks of abbreviation and their inappropriate form when employed, is a fault common to all the letters I have collated.

III. Page 284, LXVII.—Letter from T. Cryne to his Master, John Paston, dated 10th April, 22 Edw. IV. Holograph.

- Corr. Page 286, line 6, "in," for "on."  
 „ „ 14, "Thorpelond" for "Thorplond."  
 „ „ 17, "sauť" for "s<sup>u</sup>ant."

IV. Page 288, LXVIII.—Letter to Master John Paston—autograph signature of Margery Paston—about 1482 or 1483.

Immediately under the address on the back of the letter is written, in a later, but still in an old hand—

"Lřa ab ux<sup>o</sup>e ut p p<sup>o</sup>scripť infř p<sup>o</sup>."

(*i.e.*) Litera ab uxore ut per postscriptum infra patet.

See a similar note in the letter, p. 304.

- Corr. Page 288, line 5, "and" for "to," *not* corrected in the modern version.  
 „ „ 8, "Multon" for "Meelton."  
 „ „ 15, "servñts" for "ten<sup>ant</sup>ť" (*tenauntes*), corrected in the modern version.  
 „ „ 18, "except" for "exept."  
 „ „ 20, "of" omitted in copy—supplied in the modern version.  
 „ „ 22, "Calthorp" for "Caltorp."  
 „ 290, „ 1, "A goune" for "A go."  
 „ „ 5, "his" for "hes."  
 „ „ 11, "babies" for "babees."

V. Page 292, LXIX.—Letter to Master John Paston, Esquire—about 1482 or 1483—autograph signature of Margery Paston.

- Corr. Page 292, line 6, "Fille" for "Fylle."

- Corr. page 292, line 20, "herme" for "harne."  
 ,, 294, ,, 10, "besechyng" for "besychyng."  
 ,, ,, 12, "onner" for "onowr."  
 ,, ,, 14, "thys" for "this."  
 ,, ,, 24, "srwnt" for "fuant."

VI. Page 296, LXX.—Letter from John Paston to his mother, Margaret Paston, between 1482 and 1484. Holograph.

- Corr. Page 296, line 6, "wyce" for "wise."  
 ,, ,, 14, "that," omitted in copy; supplied in modern version.  
 ,, ,, 19, "we" for "ye," corrected in modern version.  
 ,, ,, 20, "oopen" for "upon."  
 ,, ,, 22, "sylf" for "sylff."  
 ,, 298, ,, 6, "trust" for "trist."  
 ,, ,, "sylf" for "sylff."

VII. Page 302, I. Letter to Lord Nevyll from Richard, Duke of Gloucester.

This purports to be printed from a modern manuscript only.

VIII. Page 304. I. From Elizabeth Browne to her nephew J. Paston. This appears to be only an ancient copy. It is indorsed in a contemporary hand, or nearly so, "The Copeye of a Lettre of Dame E. Browne ayenst Wiffm Paston."

I am unable to explain the double date in this letter which the Editor treats as the original letter sent; in that case, if it be so, the explanation which he suggests may have some force. There is no mark of a seal, and written on the back is a memorandum in a hand of about the time of Queen Elizabeth; which seems to favor a suggestion that all these letters had been collected many years ago as objects of interest, probably by some member of the family, viz.:

"Elizabeth fit Wiffi Paston Justic'  
 primo nupt' Ro. Ponynge mit ac  
 postea Georgio Browne mit ut p3 infr';  
 nisi idem Wiffis huit ij filias unius nominis."

*i.e.* Elizabetha filia Willielmi Paston Justiciarii, primo nupta Ro. Ponynges militi ac postea Georgio Browne militi, ut patet infra; nisi idem Willielmus habuit duas filias unius nominis.

Corr. Page 304, line 5, "er" for "or."

- ,, ,, 10, "ony" for "eny."  
 ,, "p'sone" for "psone."

All the transcripts of the letters I have collated appear to have been made with great care, and from them the text is printed, seemingly without revision. This I infer from the fact that errors in the transcript are not corrected in the *fac-simile* text, but are amended in the modernised text, and obviously, by collation, from the originals.

The signs used for the abbreviations in the print are not such as the modern improvements in the type would be able to supply; and this gives a semblance of error, probably not attributable to the transcriber—such as p'myse, instead of pmyse, for promyse—p'cell instead of pcell, for parcell;



and the substitution of *s* for *ȝ*—the sign of abbreviation of *es* or *is*—as *thyngȝ* for *thynges*—*towardȝ* for *towardes*—*loodȝ* for *loodis*. The editor doubtless availed himself of the best characters within his reach; but types recently have been cut which more accurately express the forms of abbreviation used in ancient writings. Occasionally the mark of abbreviation over the final letter is omitted altogether, and at other times the omitted letter is supplied—as *nothyngȝ* for *nothyng*' (p. 292, l. 3 from the bottom). In some cases a capital letter is used where there is none in the original, and *vice versâ*. These minute particulars are scarcely deserving of notice.

The chief object of this investigation being to ascertain the authenticity of the materials which have come into the editor's hands, his competency to deal with them, and the integrity with which he has discharged his duty in the publication of them, nothing more would seem to be required than to certify that, in the best judgment and belief of the person deputed to confront the printed text with the original letters—scrupulous care, general accuracy, and adequate skill are manifested in the labours of the editor; that the materials employed bear the marks of unquestionable authenticity; and that they have been honestly and efficiently produced in the publication now under judgment. So far as the portion which has fallen to my share for collation enables me to form an opinion, I have no hesitation in declaring my judgment and belief to be that the letters and materials are authentic, and that they are well and honestly edited.

WILLIAM HARDY.

Duchy of Lancaster Office,  
5th February, 1866.

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## IX.—LETTERS I. TO VIII. HEN. VII.

I have collated carefully eight of the original Paston Letters, with the transcripts as printed by Sir John Fenn (or prepared for the press by him), vol. v. pp. 310—340, and beg to offer the following brief remarks on them :—

1. It is evident that the transcriber employed by Fenn was very unskilled in the orthography of the period, and in the system of writing by which certain syllables and final letters were expressed by marks of contraction. He therefore omits these marks altogether, or errs in expressing them by letters inadequately, or falsifies the orthography.

Thus, "*myn*'," "*which*," "*help*," he transcribes "*myn*," "*which*," "*help*," omitting the final *e*. In some cases this gives us impossible forms, as "*justic*," "*cuntr*," he transcribes "*justic*," "*cuntr*." The final *ȝ* (*es*) he represents always by "*s*," so that "*kyngȝ*" (*kynges*), "*yerȝ*" (*yeres*), &c., he writes "*kyngs*," "*yers*," and, still more erroneously, "*costȝ*" (*costes*) he copies "*cost*;" "*comawndmētȝ*," "*comawndmētȝ*," he writes in the singular, "*comawndment*,"

which leads Fenn into the same mistake. The final contraction <sup>ᶜ</sup>(er) he expresses wrongly by "r," as "Walᶜ, wynᶜ" he makes "Waltᶜ," "wyntᶜ," and "psonᶜ" (parsone), he represents by "prson," "pᶜrsonᶜes" (prisoners), by "pᶜrsones," and "sᶜᶜuᶜuntᶜ" (seruauntes), by "sᶜvants." In one instance, the word "better" at length, is transcribed as "bettᶜ."

2. The transcriber often made small errors, by substituting one letter for another, &c. Thus we find as follows :—

	<i>Original.</i>	<i>Transcript.</i>
No. 1.	"leve"	"live"
2.	"bellsside"	"bellside"
	"ᶜuaunt"	"servant"
3.	"othir"	"other"
	"betwixe"	"betwix"
	"ner hadde"	"nor hadde"
	"Northwich"	"Northwith"
4.	"be"	"by"
5.	"gaole"	"gale"
6.	"vnto"	"onto"
7.	"off"	"of"
8.	"so moche"	"so meeche"

3. The above faults do not at all affect the sense, but there are others which do ; and it is remarkable that in most instances they are *corrected* by Fenn in his modernized copy, although left untouched in the transcript. For example :—

	<i>Orig.</i>	<i>Transcript.</i>	<i>Fenn.</i>
No. 1.	"cosyn' yoᶜ wyf"	"yoᶜ wyf" <i>left out</i>	"cousin your wife"
3.	"in"	"on"	"in"
	"this cuntre"	"the cuntre"	"this country"
	"makith me"	"makith one"	"maketh me"
	"theise"	"theire"	"these"
5.	"may knowe by"	"may knowe he his"	"may know by"
	"his tepet"	"by his tepet"	"his tippet"
	"atte"	"oute"	"at"

4. The transcript is sometimes perfectly correct, and Fenn has fallen into error. Thus we find :—

	<i>Transcript.</i>	<i>Fenn.</i>
No. 1.	"ther exceded not iii."	"they exceeded not three"
	"mees meet"	"proper messes [ <i>query</i> his rendering of <i>meet</i> ?]" p. 311.
5.	"do with hym"	"have with him," p. 329.
7.	"ᶜ were mette at"	"ye were at," p. 339.



5. It is perfectly obvious that these corrections and errors prove the *entire good faith* of the editor, Sir John Fenn; but, as the Original Letters speak for themselves, the objections that have been raised against their genuineness seem scarcely to require minute refutation.

F. MADDEN.

British Museum, Department of MSS.,  
11th January, 1866.

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X.—LETTERS IX. TO XVI. HEN. VII.

I have to thank the Council of the Society of Antiquaries for allowing me to inspect the manuscript originals of the fifth volume of the Paston Letters, and placing one bundle of them in particular under my examination. I have collated them with the printed copies as carefully as I was able to do, and can only add my testimony to that of others who have reported on the subject, as to the apparent honesty and carefulness with which Sir John Fenn has performed his office.

I noticed also, what has been observed on by others, a few instances of carelessness in the transcriber or printer, on the leaf purporting to give an exact copy of the originals, one or two of which were apparently corrected in the less exact copy on the opposite leaf; *ex. g.*, “moder,” wrongly printed “modyr,” at the end of Letter x. The signature to Letter XIII., printed “Oxenford” on both leaves, should be “Oxynford.” Letter xv. p. 360, “5 and 6 hundred” wrongly for “5 or 6 hundred”: corrected in the opposite leaf. I am not sure that the fancy name of the rebel leader in the seditious proclamation at the end of Letter xv. is correctly given as “Hobbe Hyrste” (p. 364). Letter XVI. p. 368, last line but two, “nō other remedy” is printed “no other remedy.” I think the mark over the letter “o” probably signified “none.”

I have thought two little circumstances worthy noting, in case further attention is directed to the subject.

Letters IX. and x., subscribed Elizabeth Brews, seem to me not in the same handwriting. Letter IX is in a rough hand; Letter x in a clerk-like one. Perhaps the lady employed an amanuensis for the second; or it is only a copy; or possibly, for reasons of her own, she employed the help of some one else for each. The fact is not noticed by the editor, both being simply noted “autograph.”

On Letter xv. there is an indorsement in Latin in very faint ink, which reads “Lřa Willi Paston filij jun<sup>9</sup> Johis Paston ar<sup>i</sup> ac řvien<sup>9</sup> comite Oxon.” This is not noticed by the editor. I observed no similar indorsement on any other in my bundle.

H. MERIVALE.

India Office,  
Jan. 18th, 1866.

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## XI.—LETTERS XVII TO XXIV. HEN. VII.

The letters appear to have been carefully transcribed, but without allowance for the contractions or the indications of the final *e*. If these were noticed by the transcriber, they were disregarded by the printer. There are several trivial errors, but they may generally be attributed to the printer rather than the transcriber.

## LETTER XVII.

P. 372, read "pursivants"

"dowe"

"garnisond."

P. 374, "of Hartford."

In postscript, "tydinge."

## LETTER XVIII.

At its head, "IHC XPC."

"worshipful."

I think the name is "Walter," not "Walker."

"xxvij."

In regard to the seal of Bishop Sherwood, Sir John Fenn (who drew it himself for the facsimile) was widely mistaken.

It is clearly a wyvern lying under a tree.

## LETTER XIX.

Perfectly correct.

## LETTER XX.

"wheys," should be "whoys."

## LETTER XXI.

Read, "a Bower,"

"stomaker (?)" read as "shoemaker" by Sir John Fenn.

"Scoteman," i.e. "Scotesman," not "Scothman."

"Sherefhoton" in the date.

## LETTER XXII.

"bothe pties."

The signature is apparently

"n E n."

## LETTER XXIII.

There is no signature of the King at the head, nor any of the Earl of Oxford at the foot.

These were supplied by Sir John Fenn from other papers, this document being a contemporary copy of the letters of the King and Earl of Oxford, not the originals.

JOHN GOUGH NICHOLS.

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XII.—LETTERS XXV TO XXXII. HEN. VII.

For the collation of these letters, see No. I.

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XIII.—LETTERS XXXIII TO XL. HEN. VII.

I have collated the originals of these eight letters with what may, for the sake of distinction, be called the literatim copies of them, printed in Vol. V.

Almost every line shows that neither the editor (Sir John Fenn) nor his amanuensis understood the precise signification of some of the common marks of contraction; such, for example, as those for the final *e* (which is generally omitted in the letter-press), and that for the plural in *is* or *es* (which is generally printed *s*). The over-line too, indicating an omitted *m* or *n*, is often wanting in the copies, though the *m* or *n* has not been supplied; and in some other cases the marks of contraction are omitted without the words being extended. Some words evidently were misread, but most of these, though not spelt as in the originals, are substantially the same in the copies. There are, as might be expected, some questionable readings; and occasionally a mark of contraction is printed where there is none in the original. A few instances occur of a word or two being unintentionally omitted. In one case, I observed a letter omitted in a word in the original, has been supplied in the copy; and where a word is repeated in the original, the copy has it only once.

Some of these various deviations from the originals are, no doubt, errors of the transcriber for the press, which escaped the eye of the editor. There are also errors of the press, I think, apparent. It is remarkable that, not only these errors, but also those of the transcriber of the literatim copies, are often in substance, though not literally, corrected by the modern version, even to the extent of supplying words inadvertently omitted. From this I infer that the modern version was not made from the literatim copies, but from other copies or the originals, and in all probability by Sir John Fenn himself, in whose handwriting the MS. of it is, in the Preface, said to be. My impression is that the literatim copies were never very carefully compared with the originals.

There are in the originals some contemporary interlineations and erasures with the pen, but in the copies the former are not distinguished, nor the latter noticed.

At the back of letter 33 are four short lines, which are not given in the printed text; they immediately precede what is printed as a Postscript; but they are not of any importance, being apparently heads of what the writer intended to communicate. "*Barton*," in that Postscript, should have been "*Bacton*," as it clearly is in the original.

From what has been said, it will be understood that the printed copies are, with few exceptions, substantially correct; and that, as to the *matter*, the modern version is the more accurate. It is evident that Sir John Fenn must have bestowed great care on them, though he was not quite

equal to his self-imposed task, according to modern notions as to the qualifications required for such an undertaking. Neither in the original letters, nor in the copies printed, have I met with any indication or trace of intentional falsification, or of any dishonesty of purpose.

Above the printed literatim copy of the Document No. 38, (which is not a letter, but an award,) are the words "Est Bekh'm thadward." No such words are on the original produced, nor indeed any heading or indorsement except a modern indorsement. Most likely there were duplicates of that award, and that the other part came into Sir John Paston's possession when he paid the money mentioned in it. If so, that part may have had on it the words above quoted, and the copy may have been made from it. If this were not the case, those words are an unauthorised addition; it may have been thought fit, for the sake of uniformity, to give the copy a heading; and one in archaic form and spelling may have been considered more in keeping than a heading in modern language. If such were the fact, the addition was certainly very injudicious.

I will only add that in letter 37, line 6 from below, the words "bothes dowter" (an interlineation) have been misread "both and dowter," and this is not corrected in the modern version.

These details, however unsuitable for the General Report, will, I think, make known the result of my collation of the above-mentioned eight letters, more intelligibly than would any general remarks that I could make upon them.

WESTON S. WALFORD.

January 8th, 1866.



V.—*Message from King James I. to the Earl of Somerset, in the case of Sir Thomas Overbury, sent on the 29th of December, 1615, through Sir George More, Lieutenant of the Tower: communicated from the Manuscripts at Loseley by JAMES MORE MOLYNEUX, Esq. F.S.A.*

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(Read March 1st, 1866.)

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On Friday the 29<sup>th</sup> of December the King his Ma<sup>ties</sup> sent for the Lieutenant of the Tower, and in his Ma<sup>ties</sup> w<sup>d</sup>rawing chamber sayed unto hym—

I wold have yo<sup>u</sup> to tell yo<sup>r</sup> prisoner that I am sory to see that he continues still to take the wrong course to his owne hurt in this buisines, as he hath don sins the beginning of it. For whereas I have appointed Commissioners to examine hym, and to deale in all matters concerning the case of S<sup>r</sup> Tho. Overbury; the Duke of Lenox being one, a noble man of myne owne blood, and alwayes a frend well affected to hym; the Lo. Chauncelo<sup>r</sup> the second, a grave and a wise man, a counsello<sup>r</sup> and a great officer well deserving in the place of justice w<sup>e</sup> he holdes; the Lo. Zouch the third, an auncient Baron, and a m<sup>a</sup> voide of all partialitie; and the fowrth the Lo. Chief Justice by his place; he hath refused by them to make knownen his desires unto me, and, pretending that by the Lo. Knollis, and the Lo. Hay, he would communicate matter of great importans unto me concerning my servises, fit for me to know w<sup>t</sup> speede, and that neither of the criminall nor civill part of the cause for w<sup>e</sup> he is restrained, nor of anything thereunto belonging he wold speake unto them; his speecche nevertheles to them was onely of that cause, and not of any other matter worth the speaking of, wherein he did nedelesly abuse me, offer wrong to those Commissioners, and therby did hurt to hym self. And whereas he sayeth that I have delt rigorously w<sup>t</sup> hym in committing hym to the Tower, there to be a close prisoner, not being convicted or accused of treason, where the custome hath bin to committ persons of his quallitie to som such place as Yorke Howse or som gentleman's keeping, and not to such a prison as the Tower is; to this I say that, for matter of contempt, and suspiçõn of light offences, it hath bin the custome to committ men of his quallitie to such a place as Yorke Howse, as was don in the case of the late Erle of Essex. But that is not his case; the offens for w<sup>e</sup> he is in question is a murther of the

fowlest kinde, neere approching unto treason (he that was murthered being my prisoner), and the proofes against hym alleaged by the Commissioners very pregnant, in so much that at my being at Roiston I was informed there was a great murmure amongst the people that justice was stayed, in that he was not sent to the Tower; and alsoe the Privie Counsell had an inclinaço (as I understood by diverse of them) to committ hym to the Tower, if I wold give them leave, bicause they thought the Commissioners durst not; w<sup>c</sup> I wold not permit; so that neither by me nor my direction he was committed to that place, but by the Commissioners to whome I had committed the examinaço of the case of S<sup>r</sup> Tho. Overbury, leaving it to them to bayle or to commit, as they shold finde cause according to the course of justice, who, after due examinaço of hym and of the cause, found the suspiço against hym so vehement, and the proofes so pregnant, as that holding the course of justice, the cause itself did enforce them (as they say) to commit hym to the Tower, he having givẽ great cause of suspiço against hym self, when, by his fres or warrant to make search *for the writings*<sup>a</sup> of one M<sup>rs</sup> Hyde, he had taken the fres of Turner and others. So as his commitment to the Tower was the act of the commissioners, and not myne; w<sup>c</sup> by them being don according to justice, and for matter of prooffe not to be made knowẽ before hand to me, I might not resist, especially considering howe the coñion people had expressed their joye for the justice don against Weston, sayeng that the King shold have subsidies and whatsoever he wold require; that the bells had bin ronge thoroughe out all the citie; and that the Lo. Maio<sup>r</sup> and the Aldermẽ by the Recorder had signified to me the great comfort they receaved in the justice don, acknowleging their great happines in living under the goveřment of such a King, and wold them selves have come unto me to give me publick thanckes, if I had not forbidden it. If therefore I shold have stopped the course of justice against hym in this case of Overbury, who was committed to the Tower, and there kept a close prisoner by my coñiaundment, and cold not have bin so murthered if he had not bin kept close, I might have bin thought to be the aucthor of that murder, and so be made odiousse to all posteritie. Neither hath he cause to thinck hym self rigorously delt w<sup>t</sup> in being sent to the Tower, to w<sup>c</sup> place many great persons have bin coñmitted for felony, and, afterwardes appearing to be cleere, have bin set at libertie w<sup>t</sup>out disgrace.

Nowe concerning my fres, of w<sup>c</sup> he sayed to the Lo. Knollis, and the Lord Hays, that he had given some to S<sup>r</sup> Ro. Cotton to be delivered to me, and som

<sup>a</sup> "In the hous." was first written, but erased, and the other words substituted.



he had kept to deliver unto me hym self; S<sup>r</sup> Ro. Cotton hath confessed that he delivered them unto hym to be kept, and to be redelivered to hym selfe, if he shold live; or otherwise, if he shold miscary, then to be givē to me, w<sup>e</sup> tres being by S<sup>r</sup> Ro. Cotton delivered to a womā, the same have bin taken and brought to me; whereas if his meaning had bin to have sent me those tres, he might have sent them unto me when first he was restrained to his chamber, or when he was in the custodie of S<sup>r</sup> Olliver S<sup>t</sup> John, or after that he had bin examined by the Lordes and was in the Tower, in causing them to be sealed up and sent to the Lordes to be delivered unto me.

As for the other tres w<sup>e</sup> for poisons and antidotes he wrote to Inglesse, I never herd of them, until three or fower dayes after he was in the Tower, and finding it to be but an idle tale, and to have no good grounde, I made noe accompt thereof. And concerning the castyng of my nativitie w<sup>e</sup> he sayes he first discovered unto me, yo<sup>u</sup> may say unto hym, that I remēber he told me something of the casting of my nativitie by Inglesse, but that myne was cast by Inglesse I never herd of it sins by any body, neither doe I beleeve that he did cast my nativity, but onely my eldest sonne that is w<sup>t</sup> God, and of that I neither did nor doe make accompt, neither needes he thinck that for that he shall be called to accompt.

The next part of his message is a desire first for his wife, that she might not be brought to an open triall, but that she might be kept in som private corner all the dayes of her life, sins she is the mother of a child; to w<sup>e</sup> I say that his desire is unseasonable, untill it shall appeare whether she be cleere or guiltie; if she be cleere he needes not feare to have her tried, and if uppō doubtfull proof she shall be found guiltie, and her offenses not appeare to be manifest, I shold be unwilling to suffer the lawe to be executed against her, for it might be in that case as in the case of one whose dagger was found sticking in the body of a man that was murthered, and yet the murder was not done by hym, but by another who had borrowed and taken the dagger. But if it shall plainly appeare that she is very fowle, as is generally conceaved and reported that she is, as being the author and procurer of that murder, then I thinck justice may not be stayed, and he shold have just cause to be glad that he is freed from so wicked a womā. Therfor if she be innocent he needes not feare, and if she be so fowly guiltie as is alleged, humble confession of her fault, both to God and the King, must preceede the pleading for pdon. As for hym self there is no cause why he shold desire not to come to triall if the proofes be so pregnant that they require it, for being innocent uppon triall he will be cleered, and so being justified shall receive noe

disgrace, as w<sup>t</sup> many great psons it hath fallen out w<sup>c</sup> have bin committed to the Tower and being tried have bin eleered for the like offenses. But if he be guiltie (as God forbid) then must he take a course by his humble confessiō to pleade for mercy, I being to followe the example of Almighty God, who doth not forgive sinnes untill they be confessed and sorrowed for, noe more can I shewe mercy where innocency is stood uppō, and the offenses not made knowen by confessiō unto me; and if he shold be convieted by lawe, he needes not take such a desperat resoluçō as rather to give cause to die then live after it, for that many have bin convicted of felony w<sup>t</sup>out aecompting it so great a disgrace unto them; but indeed if he shold be convicted of treason and ingratitude against my person, then I cold not blame hym to accompt his convietiō in that nature worse than a thousand deaths unto hym.

And whereas he desires me to acquaint hym beforehand w<sup>t</sup> the thinges that ar to be layed to his charge, besides that it is so farre against the conseiens and honor of a King to doe it, it is altogether impossible for me so to doe, althoughe I had never so good a will to doe it, for the chief justice refuses absolutely to serve in his place, as I told hym self at Roiston, if I shall be acquainted w<sup>t</sup> any articles concerning blood, before the partie come to his publick triall, and I hope he wold not have me thought to be a conspirer w<sup>t</sup> hym or any m<sup>a</sup> for the eluding of justice.

Lastly yo<sup>n</sup> shall say unto hym that if hereafter he shall desire to moove any matter for favor I will that he make the same knowē by the Lo. Commissioners unto me, who ar as well to be used as meanes of favor for hym as they have already used som pointes of rigor as he conceaves it towardses hym, and that he seeke noe other meanes wherby to informe me wherein he shall doe wrong to those Lordes, and give them oceaçō to thinke the worse both of hym and of his cause, assuring hym that by their meanes his sutes shall be more acceptable to me then by any other.

(*In dorso.*) This is S<sup>r</sup> George More's own  
hand writing when he was  
Lieut. of the Tower in  
King James the First time.



VI.—*Review of the evidence respecting the conduct of King James I. in the case of Sir Thomas Overbury : by JAMES SPEDDING, Esq. M.A. in a letter to C. Knight Watson, Esq. M.A. Secretary.*

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(Read March 1st, 1866.)

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MY DEAR WATSON,

The document which has recently been discovered by James More Molyneux, Esq. F.S.A. amongst the extensive collection of manuscripts at Loseley, containing a complete and authentic report of a message sent by King James I. to the Earl of Somerset on the 29th of December, 1615, is a valuable addition to the four letters printed in the *Archæologia*,<sup>a</sup> nearly fifty years ago, from the autographs in the same collection. Those letters were written to Sir George More, between the 9th and 24th of May, 1616, just before the trial; and there is another at Lambeth (not an autograph, but I suppose a true copy) addressed to Somerset himself in the preceding October, just before the committal. This new document gives us conclusive evidence as to the relation in which the King stood towards him in the middle stage of the proceedings, about half-way between those dates; and makes the history of it so clear and complete that no room is left for any further doubt about it. It appears therefore to be a fit occasion for collecting and reviewing the whole of the evidence bearing upon that point, of which we have now a great deal, when all is brought properly together; and of a kind too which is entitled not only to consideration but to precedence, as being better evidence than those who first told the story had access to, and such as they would themselves have preferred if they had had it. For it must be remembered that the writers of what passes for the secret history of James the First's reign were not acquainted with the true records of it. The real "secret history" is to be found in the official correspondence which passed in the course of business between those who transacted it; correspondence which they never saw, but which (or at least a great deal of it) we can see.

Instead, therefore, of taking the old story for a ground-work and trying to fit the new facts into it, I propose to approach the question the other way: to begin

<sup>a</sup> Vol. xviii. p. 313.

by setting aside for the time every fact which rests upon the report of writers whose information came from doubtful sources, and admitting those only about which there appears to be no doubt; to ascertain first what we can be said to *know* about it, and then consider what else we are to believe. In this, however, I shall confine myself to those parts of the proceeding in which the King was personally concerned. The evidence against the several persons charged with the murder of Sir Thomas Overbury was publicly set forth and brought to a judicial issue at the time, and this new paper throws no fresh light upon it. The evidence against the Earl of Somerset especially, was hunted out with the greatest diligence, studied and sifted with the greatest care, and set forth with the greatest skill and clearness; and though no official report of the trial was published, and the reports we have are all more or less defective and inaccurate, they are among the best of their kind, and probably the best that were made. It is not likely, therefore, that any new evidence will be discovered by which the aspect of his case, at it is seen in the State Trials, will be materially altered. Not so with regard to the charges against the King; charges not only not sifted by judicial process at the time, but not made or thought of till long after the time when any sifting was possible. Evidence materially affecting the aspect of these may turn up at any time, in any box or closet in which the secrets of those days have been placed for safety or found a resting place by chance.

Before I come to the particular case, it may be worth while to go back a little, for the purpose of exhibiting a piece of evidence which, although it has been accessible to all readers for the last twenty years, will probably be new to many, and the true bearing of which upon these questions does not appear to have been understood.

The discovery of the murder of Overbury happened to coincide in point of time, very nearly, with the appearance of a new favourite at Court. The rise of a new favourite was of course supposed to prelude the fall of the old; and when Somerset was seen to be called in question, for some cause not yet divulged, the inference of the Court of course was that the King was seeking a pretext for getting rid of him. And though the cause, as soon as it became known, amply explained and justified all that been done, and inconstancy in his personal attachments was not one of James's weaknesses, the hasty inference, having fallen upon ground so favourable, took root and grew; and is now a part of the story. It is of some consequence, therefore, to know how the case really stood in that respect; and it so happens that a letter from James to Somerset, written not many months



before, has been preserved, and enables us to answer the question. It was first printed in 1846 in Mr. Halliwell's 'Letters of the Kings of England,' from a manuscript at Lambeth Palace, which I have seen; a copy in an old hand, which appears to have come to that repository from some one who had guarded it as a secret treasure,—having been found (according to the docket) "in the black boxe signed with that seale w<sup>ch</sup> Sir Tho. Maye brought." It has no date, nor any mention of the person to whom it was addressed. But of the person there can be no question; and incidental allusions to two several subjects, which are *both* known to have been fresh, prominent, and irritating in James's mind in January 1614-15,—*"Peacham's Book"* and *Raleigh's History*,—leave little room for doubt that it was written about that time or not long after. Though it is long, I must give it entire; partly because, when we want to know the state of a writer's feelings, extracts are seldom satisfactory, and partly because it is important enough to be worth preserving in a correct copy.

"First I tak God the searher of all hairts to recorde that in all the time past of ydle talk I never knew, nor could out of anie observation of myne find anie appearance of anie such court faction as ye have apprehended; and so farre was I ever from overseeing or indirectlie feeding of it (if I had apprehendit it), as I protest to God I would have runne upon it with my feete, as upone fire, to have extinguished it, if I could have seene anie sparkle of it. As for your informations, ye dailie told me so many lyes of my self that waire reported unto you, as I confesse I gave the lesse credit to your reporters in other things, since ye could not be an eye wnesse of it yourself. Next I tak the same God to record that never man of anie degree did directlie or indirectlie lett fall unto me anie thing that might be interpreted for the lessening of your credit with me, or that one man should not rewle all, and that no man's dependance should be but upone the King, or anie suche lik phrase, quhiche if I had ever found, then would I have besturred my self as became both so great a king and so infinitelie loving a maister. Thirddie, as God shall save me, I mente not in the letter I wrotte unto you to be spairing in the least jote of uttering my affection towards you, as farre as yourself could requyre; my differing frome your forme in that pointe being onlie to follow my owne style, (w<sup>ch</sup> I thought the comeliest): so as then having delivered my mynde as fullie to Maye as ye could have wished,—having wretten this letter,—having quyte turned my countenance from Grahme, the lyk whairof I never did to any man without a knowin offense,—I having receaved your nephew in my bedde chamber, the facon thair of being done in a needlesse braverie of the Queene, I did surclie exspect that the ydle talk would weare out lyk the Pope's

cursing (especiallie seeing my owne hairt knew it to be without a grownde). For I am farre from thinking of anie possibilitie of any man ever to come within many degrees of your truste with me, as I must ingenuously confesse ye have deserved more trust and confidence of me than ever man did,—in secrecie above all fleshe, in feeling and unpartiall respect, as well to my honour in everie degree as to my profite; and all this without respect ather to kinne or allye or your neerest or deerest freind quhatsoever, nay onmoveable in one haire that might concerne me against the quhole world; and in these points I confesse I never saw anie come towards your merite; I meane in the points of ane inwardlie trustye freind and servant. But as a peece of ground can not be so fertill but if ather by the owin naturall rankness or evill manuring thair of it become also fertill of strong and noysome weedes, it then proves uselesse and all together unprofitable, even so these before rehersit worthie and rare pairts and merites of yours have bene of long tyme, but especiallie of late, since this strange phrenesy took you, so poudred and mixed with strange streames of unquyetnes, passion, furie, and insolent pryde, and (quhich is worst of all) with a setled kind of indured obstinacie, as it ehoks and obscures all these excellent and good pairts that God hath bestowed upone you. For although I confesse the greatnesse of that trust and privacie betwix us will verie well allowe unto you an infinitelie great libertie and freedome of speeche unto me, yea even to rebuke me more sharpelie and bitterlie then ever my maister durst do, yet to invent a new art of railing upone me, nay to borrowe the tounge of the devill, in comparison quhairof all Peachem's book <sup>a</sup> is but a gentle admonition, that can not cufie within the compasse of anie libertie of freindship. And do not deceave your self with that conceat that I allowed you that sort of lieencious freedome till of late. For as upon the one pairt it is trew yee never passed all limites thairin till of late, so upone the other I bore, God Almightye knowis, with these passions of yours of olde, dissembling my greif thairat, onlie in hope that tyme and experience wold reclame and abate that heat quhich I thought to weare you out of by a long suffering patience and manie gentle admonitions; but the circumstanees joyned to the <sup>b</sup> maid them relish ten tymes worse to my taist then otherways they wold have done if they had onlie remained in puris naturalibus of passions. For first, being uttered at unseasonable houris and so bereaving me of my reste, ye was so

<sup>a</sup> "There is now one Pecham, a minister of Somersetshire, in the Towre for that and a worse quarrell, having written seditious discourses under colour of petitions to the last parlement," &c. Chamberlain to Carleton, 5 Jan. 1614-5. (S.P.O.)

<sup>b</sup> So MS.; a word has apparently been omitted: perhaps "same."



farre from condemning your owin indiscretion thairin, as be the contrarie it seemed ye did it of purpose to greive and vexe me. Next, your fyrie boutades were coupled with a continuall doggit sullaine behaviour towards me; especiallie shortlie after my fall, though I gave you a farre contrarie prooffe after your fall, and in all the tymes of your other diseases. Thirdlie, in all your dealings with me ye have manie tymes uttered a kynd of distrust of the honestie of my freindship towards you. And fourthlie, quhich is worst of all, and worse then anie other thing that can be imagined, ye have in manie of your madde fitts done quhat ye can persuade<sup>a</sup> me that ye meane not so muche to hold me by love heirafter as by awe, and that ye have me so farre in your reverence as that I darre not offende you or resiste your appetites. I leave out of this reckoning your long creeping bakke and withdrawing your self from lying in my chamber, notwithstanding my many hundreth tymes earnestly solliciting you to the contraire, accounting that but as a point of unkindnesse. Now whether all your great pairts and merites be not accompanied with a sowre and distastefull sawce, yourself shalbe juge. Consider likeways of the difference of the things that ye laye to my charge and that I lay to yours. Heir is not he said and shee said, no conjecturall presumptions, noe things gathered out of owtward appearance. I charge you with no thing but things directlie actit or spoken to my self. I wishe at God thairfore, and I shall both pray for it and hoape it, that ye may mak good use of this litle mirroure of yourself quhich heirin I present unto you; it is not lyk Sir Walter Rallies description of the kings that he hates, quhomof he speaketh nothing but evill;<sup>b</sup> for this layes plainlie and honestlie before you both your best and worst pairts.

“To conclude then this discourse proceeding frome the infinit greif of a deeple wounded hait, I proteste in the presence of the Allmightie God that I have borne this greif within me to the uttermost of my abilitie; and as never greif since my birth seized so heavilie upone me, so have I borne it is long as possible I can; nather can I beare it longer without committing an unpardonable sinne against God in consuming my self willfullie, and not onlie my self, but in perrilling thairby not onlie the good estait of my owne people, but even the estait of religion through all Christendom, quhich all most quholie under God lyes now upone my shoulders. Be not the occasion of the hastening of his death

<sup>a</sup> So MS.

<sup>b</sup> “Sr Walter Raleigh’s booke is called in by the Kinges commaundment, for divers exeptions, but specially for beeing too sawcie in censuring princes.” Chamberlain to Carleton, 5 January, 1614-5. (S.P.O.)

through greif, who was not onlie your creator under God, but hath manie a tyme prayed for you, quhich I never did for no subject alyve but for you. But the lightening my hairt of this burden is not now the onlie cause that maks me preasse you indelayedlie to ease my greif; for your owne furious assaults of me at unseasonable houris hath now made it knowen to so manie that ye have bene in some crosse discours with me, as thair must be some exteriour signes of the amendment of your behaviour towards me. These observations have bene maide and collected upone your long being with me at unseasonable houris, lowde speaking upon both pairts, and thair observation of my sadnes after your pairting, and want of reste.

“Quhat shalbe the best remedie for this I will tell you by tounge. But for the easing of my inward and consuming greif, all I crave is that in all the words and actions of your lyf ye may ever mak it appeare to me that ye never think to hold grippe of me but out of my meere love, and not one haire by feare. Consider that I am a freeman, if I waire not a king. Remember that all your being, except your breathing and soule, is frome me. I told you twyce or thryce that you might lead me by the hairt and not by the nose. I can not deall honestlie, if I deal not plainlie with you. If ever I finde that ye think to retaine me by one sparkle of feare, all the violence of my love will in that instant be changed in<sup>a</sup> as violent a hatred. God is my juge my love hath been infinit towards you; and the onlie strenth of my affection towards you hath maid me beare with these things in you, and brydle my passions to the uttermost of my abilitie. Lett me be mette then with your entyre hairt, but softened with humilitie. Lett me never apprehende that ye disdaine my persone and undervalue my qualities; and lette it not appeare that any pairt of your former affection is cooled towards me. A king may slakke a pairt of his affection towards his servant upone the pairties defaulte and yet love him; but a servant can not do so to his maister, but his maister must haite him. Hold me thus by the hairt; ye may build upone my favour as upone a rokke that never shall feall you, that never shall wearie to give newe demonstration of my affection towards you; nay, that shall never suffer anie to ryse in anie degree of my favour, except they may acknowledge and thank you as a furtherer of it, and that I may be persuadit in my hairt that they love and honour you for my saik (not that any living ever shall come to the twentie degree of your favoure). For although your good and hairtlie humble behaviour may washe quyte out of my hairt your bypast errors,

<sup>a</sup> So MS.



yet shall I never pardon my self, but shall carie that crosse to the grave with me, for raising a man so hye as might mak one to presume to perce my cares with such speeches.

“To make ane end then of this unpleasing discours, think never to value your self to me by any other merites so much as by love and hairtlie humble obedience. It hath ever been my common ansour to anye that wolde pleade for favour to a Puritane minister by reason of his rare giftes, that I had rather have a conformable man with but ordinarie pairts, than the rarest men in the world that will not be obedient; for that leaven of pride sowres the quhole loafe. What can or ever could thus trouble your mynde? For the exteriour to the world, what can any servants exspect of their prince but countenance or reward? Do not all court graces and places come through your office as Chamberlane, and rewards through your father-in-lawe’s that is Thesauraire? Do not ye two (as it waire) hedge in all the court with a manner of necessitie to depende upone you? And have ye not, besydes your own infinite privacie with me, together with the manie offices ye possesse, your nephew in my bedde-chamber, besydes another farre more actif than he in court practises? And have ye not one of your nerest kinsmen that loves not to be ydle in my sone’s bedde-chamber? With this shuld ye have silenced these newes-bringers and makers of frayes. For no other thing is left behind but my hairt, quhich ye have nather cause to doubte, nor, if it did need, could they counsell or advyse you how to helpe.

“Thus have I now sette down unto you quhat I wold say if I waire to mak my testament; it lyes in your hand to mak of me quhat you please, either the best maister and trewest freind, or, if you force me once to call you ingraite, quhich the God of Heaven forbidde, no so great earthlie plague can light upone you. In a word, ye may procure me to delyte to give daylie more and more demonstrations of my favours towards you, if the faulte be not in your self.”<sup>a</sup>

Here, as it seems to me, we have both a sufficient explanation of the origin, and a clear proof of the error, of the rumours which were beginning to prevail at Court. Somerset had begun to abuse the authority which he possessed over the King’s affections. He had become imperious, insolent, violent, jealous, and exacting. His behaviour had provoked angry and passionate expostulation; of

<sup>a</sup> Lambeth MSS. 930, 90. Docketed, “ADRIAN MOORE, JHONE HOLLAND. These three letters weare in the black boxe signed with that seale w<sup>ch</sup> Sir Tho. Maye brought.” The MS. is not divided into paragraphs.

which the courtiers had heard enough to show that there was a quarrel of some kind. And so far they were right. But if they thought that it arose from a cooling of affection on the King's side upon the transfer of it to a new object, this letter affords good proof that they were wrong. For this is not the language of an affection wearied of itself and seeking occasion to escape from its bonds, but of one painfully alive, passionately loyal, bitterly resenting the inadequacy of the affection with which it is requited, and earnestly desiring to be restored to its former condition. If the love was cooling, it was clearly not on the King's side that the process was beginning. And indeed if he had really wished to find a pretext for withdrawing his favour from Somerset, what more did he need than the conduct which provoked this letter? Instead of imploring him so beseechingly to be again what he used to be, why did he not simply let him understand that the favour he had enjoyed had been abused and forfeited, and was withdrawn?

Nor did anything occur between the writing of this letter and the discovery of the murder of Overbury which belied the professions in it. Somerset continued to be as great a man as ever in all outward conditions;<sup>a</sup> except the opinions of the courtiers, who, knowing that there had been a quarrel and seeing a new man rising rapidly in favour, began to look for a change. Whether such a change would have come at all, how soon, and with what circumstances, had things gone on in their ordinary course, nobody can ever know. Changes of the kind were more than once confidently expected and predicted during James's reign, which never came to pass. But the discovery of the murder utterly altered the case. And we have now to inquire how the King entertained that discovery, and what measures he took upon it.

Setting aside then (for the present) rumours, speculations, and anecdotes of doubtful authority, I shall begin by stating what we may be said to *know* about this.

Sometime in July 1615 Sir Gervase Hellwysse, Lieutenant of the Tower, hearing from the Earl of Shrewsbury (who had heard it from Secretary Winwood) that Sir Thomas Overbury was suspected to have died by violence while under his charge, volunteered a statement to Winwood; in which he admitted that there had been a *design* to poison Overbury by the hands of Weston, the under keeper,

<sup>a</sup> For the relation between him and the King as late as the 20th of August, see Mr. Gardiner's copy of Gondomar's despatch, Oct. 30, 1615, which I had not seen when I wrote this.



but asserted that he had himself detected, dissuaded, and taken means to prevent, though he had not revealed it.

This Winwood reported to the King; whose first act was to require Hellwysse to set down his declaration in writing.

The declaration which in obedience to this command Hellwysse drew up is dated 10 September, 1615, and is still to be seen among the State Papers. It admits not only that he had himself discovered the intention of Weston to poison Overbury, but that he had since heard from Weston that Overbury was really murdered, and that it was done with a clyster, administered afterwards by an apothecary's boy, who had been bribed. The only actor in the business that he knew of, besides Weston, was (he said) one Mrs. Turner; who, as soon as she heard that the case was likely to be inquired into, had sent Weston to sound him and find out how much he knew, and what part he was likely to take. But though he did not in this statement mention the Earl or Countess of Somerset as directly implicated, it seems that in his previous communication to Winwood he had excused his own silence as proceeding from fear of "impeaching or accusing great persons;"<sup>a</sup> and an admission in his present declaration that though he had "set down the whole truth," it was "peradventure not the whole truth," would naturally be interpreted as referring to Somerset.

Upon this the King, who does not appear to have heard of the rumour before, referred the matter to "some counsellors," with the following general instructions for their proceeding:

"There are two things in this cause to be tried, and the verity can be but in one of them: first, whether my Lord of Somerset and his lady were procurers of Overbury's death, or that this imputation hath been by some practised to cast an aspersion upon them. I would first have you diligently inquire of the first; and, if you find them clear, then I would have you as carefully look after the other, to the intent such practices may be discovered and not allowed to pass with impunity."<sup>b</sup>

The case upon inquiry was found to be so grave that it was thought expedient to put it into the hands of Sir Edward Coke, then Chief Justice of the King's Bench, and more practised in such investigations than any other man in England. A fragment of a letter, undated and unsigned, and without anything to indicate the address, but written in Winwood's hand, who was at that time in attendance

<sup>a</sup> Bacon's charge against the Countess.

<sup>b</sup> Read at the arraignment of the Countess, and the original shown to the Peers. See State Trials, vol. ii. p. 956.

on the King, represents, probably, the King's instructions on giving Coke the commission. They are instructions which would naturally be suggested by Hellwysse's declaration; the persons named being those indicated therein as most immediately concerned in the treatment of Overbury; Mayerne, as the physician who had prescribed for him and "left behind him directions;"<sup>a</sup> the French apothecary, as the medical man who had attended him by Mayerne's appointment; Weston, as the under-gaoler who had been detected by Hellwysse in the act of bringing food which he knew to be poisoned; Mrs. Turner, as a person with whom Weston was known to be in collusion; Sir Thomas Monson, as the man who had recommended Weston for the place of under-gaoler with special charge of Overbury; and Hellwysse himself, as the responsible officer who by his own admission had known of the attempt and not revealed it. Judging by the style, and comparing it with other drafts in the same hand, I have little doubt that it was written by Winwood from the King's dictation; and what remains of it is worth giving at full length.

\* \* \* \* \*

"and whither was yt ow't of hys owne meere motion or by the perswasion of any other, and yf by the perswasion of any other by whose was yt, and to what end.

"Did he ever meete w<sup>th</sup> him or heare word from him, eyther during the tyme of hys being in the Tower or any tyme sence, and to what purpose. Did he ever knowe of any mony he receaved from any, and for what use. When was the fyrst tyme that ever he heard of thys vyle busines and by whom.

"Mayerne must be asked the state of the prisonnier's body when he last saw him, and what deseases he was most enclyned unto: also both he and other physitians are to be asked the symptomes and effect of poyson, especially being geven in a glyster.

"The French apothecary ys to be asked whether he himselfe or a man of hys mynistred to the prisonnier when he was in the Tower. And yf hys man, who this was, how oft he sent him to him, and w<sup>th</sup> what phisick, especially what the last phisiek was that he sent him, and yf yt was a glyster: as also he must be asked yf he had any acquayntance w<sup>th</sup> M<sup>rs</sup> Turner, and what yt was, and whether he knew of any acquayntance betwixt hys man and her, and upon what occasion.

"The crowner ys to be asked what report was made unto him of the forme of the pryson<sup>rs</sup> deathe, and what marks he saw upon hys body.

<sup>a</sup> He had been sent to Bath, I believe, to attend the Queen.



"More persons may bexamined<sup>a</sup> and more Interrogatoryes made, as yt shall fall owt in the cowrse of the examinaç.

"Th'orderly fayre cowrse in a thing of thys nature ys, that fyrst Weston be haerd tell hys owen tale, after a good admonition that ys to be geven him : yf he contrary the Lievetenant, then, after once re-examining of the Lievetenant, are they to be confronted *ante omnia* ; but yf they agree in one tale then ys Mystress Tournier to bexamined next Weston : and yf they differ, after her keeping cloase a day or towe, they towe are to be confronted, then the Lievetenant to be re-examined, then Monson, then the rest of the partyes as occasion shall requyre.

"In conclusion, thys fact and mynt must cyther be trew or not : yf both prove trewe, then ys there noe more neede of examination : yf the mint only prove trewe, then ys there severe tryall to be taken for fyndeing owt the grownd of the lye upon the fact ; but yf bothe be false, then must there be a fowle conspiracye in the busines, for the fynding owt wh'of noe paynes ys to be spared ; the punishment w'of will be the best example that ever came in my cowrt. But sence as yet the discoverye goes no further then to meane persons, the fayrer, juster, and strieter that the tryall ys, the more favour and honour yt will be to thoase greate persons to whom thys busines may be thought to have any indirect relation : for where innoceney ys not clearely tryed the scarr of calumnye can never be clerely cured."<sup>b</sup>

Coke, finding how deeply the evidence implicated the Earl and Countess of Somerset, thought it prudent to strengthen himself with the help of persons of higher rank than his own ;<sup>c</sup> and upon his request to that effect the King joined in commission with him the Lord Chancellor Ellesmere, the Duke of Lenox, recently made Lord High Steward of the King's house, and Lord Zouch, recently made Warden of the Cinque Ports. The exact date of the Commission I have not been able to ascertain ;<sup>d</sup> but I suppose it to have been early in October—certainly before the 17th. Nor can I find any record of the exact time at which

<sup>a</sup> So in MS.

<sup>b</sup> S. P. Dom. James I. vol. lxxx. p. 132, A. The first sheet is missing; no signature, date, or docket.

<sup>c</sup> Bacon's Charge against the Countess of Somerset.

<sup>d</sup> Gondomar's despatch, Oct. 29, 1615, which supplies some new particulars concerning the movements of Somerset and Coke at the time the Commissioners were appointed, does not give the date. But he states that the first meeting of the Commissioners was on the 15th of October; and I have no doubt that Mr. Gardiner is right in supposing that the Commission was signed and delivered to Coke in person at Royston on the evening of Friday the 13th.

I have thought it better to add these corrections in foot-notes than to incorporate them in the text, because I did not know of this new evidence when I drew up my narrative, and if I were to introduce alterations I might make it inconsistent with itself.

Somerset was sent for as a person implicated, or any authentic record of the circumstances. But if it be true that during the earlier investigations he was attending the King on progress, being still in possession of all his honours and offices, the natural course of proceeding would be this: the Commissioners would send a special messenger to the King to say that Somerset was wanted, and beg that he might be directed to repair to London and hold himself in readiness to appear before them. And it was probably upon this occasion that the parting scene which Sir Anthony Weldon professes to have witnessed at Royston, and the particulars of which are so well known that I need not repeat them, really took place; at which time it may very well have passed in the manner described: for the King could not have treated Somerset, before he had been examined, as a guilty man,—even if he had known (which he did not<sup>a</sup>) what the evidence against him was; and yet his reluctance to go, and the style of his behaviour at the moment, may very possibly have made the King feel that there was small chance of his proving innocent; so that the words spoken by the King *immediately after the parting* may have been suggested on the instant by the parting itself.

But whatever may have been the manner of the King's behaviour to Somerset in public, the relation in which they really stood towards each other after this time is known to us on better evidence. Weldon may have described truly what he saw, but he could not then know what the occasion was; and, in connecting the scene with circumstances which he learned afterwards, he may easily have made mistakes. But among the manuscripts at Lambeth there is a copy of a letter from the King—it came in the same sealed box which contained the letter I have already quoted—without date indeed, but evidently addressed to Somerset, and evidently written soon after the appointment of the Commissioners; which shows that Somerset had vehemently remonstrated against the act, and exhibits the state of the King's feelings towards him in a manner so manifestly sincere, that it is worth quoting in full; the rather because the copy printed by Mr. Halliwell in his "Letters of the Kings of England" is in some places incorrect.

"I neid not to ansour your lettir, since Lenox hath long before this tyme told

<sup>a</sup> It would seem from a passage in the newly discovered paper as if Coke had actually objected on legal grounds to acquaint the King with the evidence: "And whereas he [Somerset] desires me to acquaint hym beforehand w<sup>th</sup> the thinges that ar to be layed to his charge, besides that it is so farre against the conseiens and hono<sup>r</sup> of a King to doe it, it is altogether impossible for me so to doe, although I had never so good a will to doe it; for the Chief Justice refuses absolutely to serve in his place, *as I told hymself at Roiston*, if I shall be acquainted w<sup>t</sup> any articles concerning blood before the partie come to his publick triall."



you my resolution on that pointe; quhereupon you have bestowed so much skribling and railing, covertlie against me and avowedlie against the Chancellaire. Yett can I not abstaine pairtly for satisfaction of my owne hairt, and pairtly for satisfieyng you and your allye with reason (if reasons can satisfie you), to send you these fewe observations upon your letter.

“In a bussinesse of this nature I have nothing to look unto but, first, my conscience before God, and nexte my reputation in the eyes of the quhole world. If I can find one man strieter then another in pointe of examination, I am bound in conscience to employe him in it; and when in my conscience have sett downe a course, to change it at the instance of the pairtie, without any other reason but becaus they will have it, it waire litle for my honour. That I was too faint in not resisting the superbe<sup>a</sup> judges willfullnes, I confesse I ever was and will be faint in resisting to the tryal of murther, and as bold and earnest in prosecuting the tryal thair of. And as my proceidings from the beginning of this bussinesse have bene onlie governed by the rewle of my conscience, as the Searcher of all hairts knowes, so must I to my great regraite confesse and avowe that from the beginning of this bussinesse both your father in law and ye have ever and at all tymes behaved yourselfs quite contraire to the forme that men that wishe the tryall of the veritie ever did in such a cace. And how farre it is now out of tyme, after that the Chancellaire hath served me more then thirteene yeares with all honour and faithfulness, having ever been a Regaliste, to rake up from the bottomesse pitt the tragedie of my poor mother, I appeal to your own judgment. Then quhy shuld I be thus neidlesslie vexed? This warrand stretches onlie to examination, whairin no innocent persons can gett wrong; and since the Chancellaire sees himself so suspected, is it to be thought that he daire utter any partialitie? And if ye will neid suspecte the worst (which is nather likelie nor possible), waire it not a more handsome way for my reputation that he might be privatelie advysed to be silent when he waire thaire except in yeas or noes; or ellis in regard of his aage and infirmities, and his manie bussinesses in the terme tyme, to mak his apparance but verie seldom? and so forbear to give anie opinion, as not acquainted with the course of the bussinesse. And as for the external show of my election of him in disfavour of you, first, I am sorrie the world shuld see you execepte against so grave a man; and nexte, the more severe choicce I mak of persons for examination, the more it is in your favour, if honour and tryal of innocence be your end.

“Now, as to your motion in<sup>a</sup> putting all the judges in this warrand, if ye

<sup>a</sup> So MS.

meane for tryall in lawe, I never ment it otherways; but if ye meane for examination, it is more then absurde. And whairas ye alleadge that greate counsellors waire never employed in the examination of a thing of this nature, I say the quyt contrarie is trew, when as the circumstances or articles of the tryall may reflecte upon anie great personages; in which case the juges daire never presume to medle without better assistanee. To conelude then, I never had the occasion to shoue the uprightness and sinceritie that is requyred in a supream juge as I have in this. If the delation prove false, God so deale with my soule as no man among you shall so much rejoyce at it as I; nor shall ever spaire, I vowe to God, on grain of rigour that can be streatched against the conspiratours. If otherwayes (as God forbidde), none of you shall more hairtelie sorowe for it; and never King used that clemencie as I will do in suche a case. But that I should suffer a murther (if it be so) to be suppressed and plaistred over, to the destruction of both my soule and reputation, I am no Christian. I never meane wittinglie and willingly to beare anie man's sinnes but my own; and if for serving my conscience in setting downe a faire course of tryall I shall lose the hands of that familie, I will never care to lose the hairts of anie for justice saik.

"Faile not to shoue this letter to your father in law, and that both of you reid it twice over at least; and God so favour me as I have no respect in this turne but to please him in whose throne I sitte. And so fairwell; praying the author of all veritie to mak the cleare veritie to be plainlie manifested in this case.

"JAMES R."<sup>a</sup>

This letter must clearly have been written after the appointment of the Commissioners, and probably not later than the 19th of October; for had it been written later, the King could hardly have failed to allude to a proceeding of Somerset's of which he was informed in a letter from the Commissioners dated the 18th, and which had a very suspicious appearance.

On the 16th of October, Somerset, being still at large and still holding the seals of his office, sent a pursuivant, accompanied by a constable and a locksmith, to the house of Weston's son, with a warrant "to search for bonds and writings concerning Mrs. Hynde;" under pretence of which, "divers writings concerning Mrs. Turner" were seized and carried away. Mrs. Turner being at the time the King's prisoner on a charge which was under investigation by the King's Commission, the Commissioners considered this so great a contempt that they at

<sup>a</sup> Lamb. MSS. 930, 91. Docketed, "ADRIANE MOORE. JHON HOLLAND."



once ordered both him and the Countess to keep their several chambers, and see nobody except their own necessary servants. And when they found that, in spite of this, the very next morning Somerset had endeavoured to get a message conveyed to Mrs. Turner, they committed him to close custody under the charge of Sir Oliver St. John.

All this they reported to the King on the 18th, and the next day received a message from him signifying approval of their proceedings, and encouraging them to prosecute the business.<sup>a</sup>

On the 19th Weston was brought up for trial, but "refused to put himself upon the countrye as the lawe required, and therefore in lawe stood mute." Upon which the nature of the *peine forte et dure*, which was the alternative, was described to him, and the trial was adjourned for four days, in hope that he would think better of it. Meanwhile, that the large audience, including "some of the nobilitie and many gentlemen of great qualitie," which had gathered to hear the proceedings, might not be altogether disappointed, the Judges "thought meete . . . to have openly and at large redd the confessions of the said Richard Weston, and the testimonies of others, aswell concerninge the fact of the said Richard Weston, as the *Earle of Somersett and the Countesse*, and Mrs. Turner, without sparinge of any of them, or omitting any thinge material against them (the necessitie and course of the evidence requiringe it, for that it appeared thereby that the said Richard Weston was peured and waghered by some of them); to the great satisfaction of the auditorie (which we might well discerne by their gesture), and to the great hono<sup>r</sup> of yo<sup>r</sup> Ma<sup>tie</sup>, and your princely zeale to justice."<sup>b</sup>

With this proceeding the Commissioners (except in so far as Coke was one of them) had nothing to do. It was the act of the Judges of the King's Bench, who reported it to the King the same day. I leave to lawyers the question how far it amounted to a prejudgment of cases which they were afterwards to try. The point with which I am concerned is the new position in which it placed the case of the Somersets. Neither of them had as yet been either accused or examined; they were as yet only suspected; and the evidence against them was in preparation and incomplete. It is true that the evidence now produced for the satisfaction of the audience was no more than must have been produced, had the trial proceeded, for the conviction of Weston; but the production of it in this irregular manner by authority of the Judges, whether justifiable or not in law, could have only one interpretation in public opinion; it was a judicial declaration

<sup>a</sup> Lord Fenton to the L. Chancellor, 19 Oct. 1615.

<sup>b</sup> The Judges of the King's Bench to the King. S. P. Dom. James I.

that the Somersets were seriously implicated in the murder; and, whatever explanations they might give when called to their answer, it was impossible after this that they could be cleared without public trial.

The King, having received the Judges' letter reporting all this, wrote to Coke the next day (20 October) approving of what they had done and what they proposed to do; but because he concurred in opinion with them "that Weston, having neither lands nor goods to loose" [the ordinary motive of standing mute being for the benefit of heirs to save lands and goods from confiscation], "by practice hath bene wrought to this obstinacy, perhaps upon this sinister suggestion, that the accessory cannot be called in question unlesse the principal be first condemned,"—directing the Commissioners to make use of the interval in examining Weston himself "if no man had practised with him" (to induce him to stand mute), and also "all other parties against whom they might conceive just suspicion; namely, the Earl of Somerset and the Lady his wife; whom in like manner they were to examine on those points mentioned in the former letters of the Commissioners,"—meaning, I suppose, the abstraction of the papers concerning Mrs. Turner. "In this particuler," he concludes, "you may remonstrate unto them how unworthy a thing it is, in the state they now stand, to heape sin upon sinne, and to charge their consciences with the apparent danger of the damning of the soule of that miserable wretch, who as he hath bene the murtherer of another so now wilbe the murtherer of himselfe; wherby let them know that they can little releive themselves, if they shalbe found guilty, for w<sup>ch</sup> we professe we shalbe hartely sorry. This being our resolution, to use all lawfull courses that the foulness of this fact be sounded to the depth; that, for the discharge of our duty both to God and man, the innocent may be cleared, and the nocent, as the nature of the offence shall deserve, may severely be punished."

This was to the Judges. On the 21st he wrote to the Commissioners much to the same effect; directing them to examine the Countess, and to confront Weston with her and Mrs. Turner, and with the Earl himself if needful; also to examine Helwysse and Sir Thomas Monson; and "earnestly requiring them, as they tender both his conscience and honour, to use all means for the full clearing and manifestation of the verity in this business, though they be not bound by law to do it—so that they do nothing against the law, wherein he must trust to their knowledge and integrities."

To the proposal, however, of re-examining Weston, and confronting him with the others, the Judges objected; alleging that "a re-examinacon or confrontinge



after a publique conviction of the ptie delinquent was not such as had been used by the course of his laws ;” and therefore that “the Earl and Countess would not be examined till after Monday,” on which day the trial was to proceed. And the Commissioners writing at the same time to the same effect, the point was not further pressed.

On Monday, the 23rd of October, Weston was brought up again, and, having consented to put himself upon his country, been tried, convicted, and sentenced, was hanged on the 25th. The same afternoon, and again on the 28th,<sup>a</sup> Somerset was himself examined ; and, though no record remains of the particulars of the examination on either day, the important paper which follows gives us the result :—

“ THE COMMISSIONERS’ REPORT TO THE KING TOUCHING THE EARL OF SOMERSET.<sup>b</sup>

“We are of opinion that there is vehement suspicion, and that the matter uppon consideration of the examinations and testimonies is preignant against the Earle of Sommerset for being accessorie to the poisoning of S<sup>r</sup> Tho. Overbury before the fact done. And we had resolved to have committed the Earle to the Tower before his Ma<sup>ties</sup> comming to Whitehall, if he had not had the custodie of the seales and other ensignes and ornam<sup>ts</sup> of the King’s speciall favor. And, the saide seales and ensignes being taken from him, we hold it necessarie that the said Earle be comitted to the Tower.

“T. ELLESMERE, Canc.

“LENOX.

“ZOUCHE.

“EDW. COKE.”

This report, though it appears to be the original, being fairly written by Coke, and bearing the signatures of the several Commissioners in their own handwriting, has no date. But the allusion to the King’s coming to Whitehall, coupled with Camden’s note of the day when Somerset was deprived of the seals and sent to the Tower, enables us to fix the date within a day or two. Sir R. Winwood, writing from Theobalds on the 30th of October, directs the Commissioners to attend his Majesty at Whitehall at three o’clock the next day ; and we learn from Camden that the Earl was deprived of the seals and staff and committed to the Tower on the 2nd of November.

So far all was simple, natural, and straight-forward on the King’s part. A

<sup>a</sup> Camden.

<sup>b</sup> This is the docket, and is in Coke’s own hand.

prisoner in the Tower had been murdered. The murderers and their accomplices were to be discovered and brought to justice. A commission was appointed, with instructions to search the matter to the bottom, and with all the powers requisite for the work. They were left to pursue the inquiry in their own way; and when they reported that there was evidence implicating the Earl of Somerset as an accessory, they were at once authorised to commit him to the Tower,<sup>a</sup> and he was committed accordingly.

The Earl on his part saw well that his hope of escape lay in his personal influence over the King; and having tried in vain to recover it by appeals to his affection in tones of complaint and reproach, he now bethought himself of another device to bring him to a private hearing. He intimated (15 Nov.) that he had some important state secret to communicate. And when the King replied by directing the Commissioners to hear his communication and report it,<sup>b</sup> he declined to make it to *them*; alleging that it did not concern the criminal part of the business; and requested an interview with Lord Knolles and Lord Hay.<sup>c</sup> To this the King, after considerable delay, yielded. On the 18th<sup>d</sup> of December Lords Knolles and Hay were privately sent to speak with him; and it must have been either upon their report, or upon some subsequent message of the same kind,—and including among other things a request, reasonable enough according to modern notions, but contrary to practice then, to be acquainted beforehand with the charges against him,—that the King on the 29th of December sent for Sir George More and dictated his reply; which Sir George, it appears, set down in writing, in the paper recently discovered and now to be published. It will be found, I think, to be in perfect accordance with all the King's proceedings in the matter both before and after. The manner is earnest and natural, and so characteristic of the man that we need not hesitate to accept it as a faithful report of the words actually spoken. For proof of this, I must refer to the whole paper. It will only be necessary here to state the substance of the message; which, nakedly expressed in modern language, amounts to this:

Sir George More was to inform Somerset that nothing had been done against him which justice did not absolutely require; that no exception could be fairly

<sup>a</sup> November 2. *Somersetto sigilla adimuntur: baculum Camerarii Regii insigne deponere et se Delegatis sistere per Baronem Wottonum jubetur; a quibus ad arcem Londinensem in custodiam mittitur, Georgio Moro arcis prefecto constituto.*—Camden.

<sup>b</sup> Sir G. More to the Commissioners 18 Nov. Statement of Sir G. More 22 Nov.

<sup>c</sup> Ellesmere and Coke to the King.

<sup>d</sup> Decem. 18. *Baro Knolles et Baro Hays submissi a Rege ad Somersettum.*—Camden.



taken to any of the Commissioners; that whatever communications he wished to make he could make at any time through them; that his committal to the Tower was according to custom in similar cases, and was a measure which, in the face of their report as to the evidence, the King could not have interfered to prevent without exposing himself to suspicion of complicity; that if he and his wife were innocent, they need not either of them fear trial, which would clear them; that even if they should be found guilty, and yet the offence not appear manifest, he would not let the sentence be executed; that if they were guilty, they must confess their crime before they could ask for mercy, but upon that condition need not think their case desperate; that to acquaint him beforehand with the things that were to be laid to his charge was not in the King's power even if it were otherwise allowable, for it was more than he himself had been permitted to know; and finally, that if Somerset had any favour to ask hereafter, he must make it known through the Lords Commissioners, and not seek any other means.

If there be any difference between the tone of this message and that of the letter written two or three months before, it is explained by the changes which had come over the aspect of the case in the interval. When he wrote that letter, the King had only heard that Somerset was so far touched that it would be necessary to examine him. He had since been informed, first by the Commissioners in the beginning of November that there appeared upon examination to be "vehement suspicion" and "pregnant matter" against him as an accessory before the fact, and afterwards by Coke (27 November) that the evidence against him was "sufficient:"—meaning of course sufficient to justify conviction. "He was not proceeded withall," Coke writes in reporting the trial and conviction of Franklin, one of the subordinate actors, "untill he had discovered sufficient matter against the Earle of Sommerset, and that I had fortified his testimonie by other witnesses, which by God's providence I attained unto."\* Somerset therefore stood now towards the King in a very different position from that in which he stood then.

Nor is it improbable on the other hand, that, though the King still upheld the authority of the Commissioners, leaving them to pursue the inquiry in their own way, and being even content to remain ignorant of the particulars of the evidence on which they were proceeding, he was less disposed than he had been to place absolute reliance on their discretion and sagacity. For in the course of the trials which had been going on, Coke (who in his double capacity of Commissioner to

\* Coke to the King, 27 Nov. 1615

investigate and Chief Justice to try, was in effect the manager of everything,) had shown so eager and indiscriminate an appetite for evidence on one side, and such precipitation in announcing to the public from the Bench the import of what he had in store, that a duller man than the King could hardly have failed to suspect his judgment. When he wrote the letter last mentioned, he had just been announcing in open court, that, "*knowing so much as hee knew*, if this plott had not been found out, neither the courte, cittie, nor many particuler houses had escaped the malice of this wicked crue."<sup>a</sup> In that letter itself, the new evidence which he described as "sufficient" against the Earl of Somerset was by his own showing insufficient. It was Franklin's confession of a conference with the *Countess*, in which the Earl was *supposed* to have taken part. But it appeared upon the very face of it that Franklin never *saw* the Earl; and though he believed him to be in the adjoining room and taking part in what passed, he could not have *known* that he was there at all, much less *what* part he took. And a few days later, having in the mean time sent Dr. Whiting to prepare Franklin for death, and obtained from him (in answer apparently to leading questions suggested by himself,) <sup>b</sup> offers of many portentous disclosures, he not only concluded in his own mind that an extensive Popish poison-plot had been on foot,<sup>c</sup> but made a second intimation to the public from the Bench, preparing them to expect some revelation of the kind. "For other things," he said, "I dare not discover secrets; but, though there was no house searched, yet such letters were produced *which makes our deliverance as great as any that happened to the children of Israel*."

This intimation was given out in court on the 4th of December; when Sir Thomas Monson, having been arraigned and pleaded not guilty and put himself upon God and the country, was suddenly removed from the court without

<sup>a</sup> "The effect of Franklin's arraignment," S. P. Dom. 27 Nov.

<sup>b</sup> For instance, "*Being asked* whether he should not have had an hundred pounds to be employed to the Palsgrave and the Lady Elizabeth, answered, 'An hundred? Nay 500, I will not say how much'.... *Being tould* that the Quene had bene extraordinarily sicke and payned, and her yong children taken away, sayd he, 'Soft, I am not come to it yet'.... *It was sayd to him* that it was not possible so yong a lady as the Lady Somerset should contrive such a plott without some helpes. 'No, no,' said he, 'who can thinke otherwise? for the lady had no money; but the money was had from the old lady,' " &c.

<sup>c</sup> "And where your M. wryght that you would gladly knowe whether this newe discovery concerneth only this villany, or if it touch me in some higher nature, may it please your Matie to be advertised that it concerneth not your Maties own royal person, nor the Prince that now is, but some overture is made of some wicked attempt (besides this villany) against some that be dere and nere unto you, and besides some probable suspitions are given of some other persons, I will not say of what sexe they be, to have had an hand in this crieing syn of poisoninge." S. P. Dom. 83, 344.



further proceeding (though not without a declaration from the Chief Justice that his protestations of innocence showed him to be indeed a very atheist, "the proofs being so plain that were to be produced against him,")<sup>a</sup> and sent to the Tower. And it may very well have been upon that occasion that the King desired to see with his own eyes the proofs that *were to be* produced. Which it seems he did. For one of the grooms of the Privy Chamber, having reported the fact in a letter to Sir William Monson (Sir Thomas's brother), and being called in question for it, made the following declaration as to his authority for the statement: "He did heare the Lord Bishop of Bath and Wels say, that his Ma<sup>tie</sup>, understanding that Sir Thomas Mounson was to receve his triall, did send to my Lo. Chief Justice for all the evidence or examinations which was to be delivered against S<sup>r</sup> Tho. Mounson; and that his Ma<sup>ty</sup> received the same, and did curiously consider every circumstance; and further, the Lo. of Bathe said that his Highness found many probable circumstances, forth of all which he could not make one unaunswerable argument to convince Sir Thos. Mounson; and that he would not condemne him if he were of his jurye. And further, the said Lo. Bishop said that thereupon the King deferred his triall, to see what other evidence would come against him."<sup>b</sup> Now, though it is true that Coke committed the writer of the letter to the King's Bench prison for slandering the King in writing it,—“which giveth not an action,” he said, “*de scandalis magnatis*, but *de scandalis optimi et maximi*,”—I do not find any ground for suspecting that the statement was untrue; but find on the contrary that it furnishes a natural and sufficient explanation of the further proceedings in the case of Sir Thomas Monson; which have been thought inexplicable without supposing some unrevealed mystery, of the existence of which we have no other evidence whatever.

If this was so, that the evidence against the Somersets likewise might turn out to be such as either would not procure or would not justify a conviction, would naturally at this time present itself to the King's mind as a possibility. But however that might be, a public trial, after what had passed, was in their case unavoidable. It had been postponed hitherto because the Countess, who, as most directly implicated, was to be tried first, was with child. She was delivered of a daughter on the 9th of December; and on the 19th of January both she and her husband were indicted for the murder, and a true bill found against them.<sup>c</sup> I presume, therefore, that the arraignments were then expected to be

<sup>a</sup> Sir J. Throckmorton to Mr. Trumbull, 20 Dec. 1615. See "Court and Times of James I." i. 384.

<sup>b</sup> Examination of John Lepton (taken by Coke), 5 Feb. 1615-16. S. P. Dom. vol. 86, p. 31.

<sup>c</sup> Camden. Lord Carew's Letters (Camden Society), p. 23.

proceeded with at once, and would have been so, but for a fresh question that came in the way, relating to some secret negotiation with Spain in which Somerset had been engaged, and requiring the presence of Sir John Digby, then resident ambassador there. This made it necessary to suspend the further proceeding for the murder till his return. And before he arrived a dispute between the Lord Chancellor and the Lord Chief Justice on a question of jurisdiction, then a serious illness of the Lord Chancellor himself, together with some other accidents which I need not stay to describe, caused further postponements; so that it was the 24th of May before the trial came on.

Justice, however, did not suffer in the end by the delay. For in the meantime Coke's threat that he would resign his place if the King were acquainted beforehand with the articles of accusation, appears to have been either forgotten or withdrawn. And indeed it is so hard to imagine any reasonable ground for the objection that I think the King must have misunderstood him. Had he threatened to resign his place as Judge if required to do the work of a solicitor for the prosecution, or to give, "before the party came to his public trial," an opinion upon the merits of the case, he would have had good reason, and anticipated by a generation or two a sound and salutary rule of judicial procedure. But on what principle either of reason or law he could maintain that the King, who was *not* to be judge and who *was* to be prosecutor, ought to be kept in ignorance of the grounds of the prosecution, I cannot guess. Whether he meant it or not however, and whatever his reasons were, he did not carry the threat out. For before the trial came on, the King did become acquainted with the articles of accusation, took a critical interest in sifting the evidence, agreed to strike out a good deal of it, and to reduce the charge into accordance with so much of it as seemed fair and sound, and yet the Chief Justice continued to serve in his place. The truth is, that, since it was the business of the Attorney-General in cases like this to conduct the prosecution in Court, it was necessary at last that he should see the examinations; and the King's Attorney could not object to give information to the King. In the proceedings against Weston, Mrs. Turner, Hellwysse, Franklin (now all tried and hanged), and Sir Thomas Monson (not yet tried though already declared guilty), Bacon had no part, and, for anything that appears, knew no more of the case up to the end of December than was public.<sup>a</sup> But in January he was called on to draw the indictments, and therefore to

<sup>a</sup> "To have a man chased to death in such a manner (as it appears now by matter of record, *for other privacy of the case I know not*)," &c. Charge against Lumsden, &c. in the Star Chamber, 10 Nov. 1615.



examine the evidence against the Somersets; and in an interview with the King, which I gather to have been on the 19th, he made his first report upon it.

This report again altered the aspect of the case in some degree. For to Bacon the evidence did not appear nearly so conclusive as it had done to Coke. "The evidence upon which my Lord of Somerset standeth indicted (he said) is of a good strong thread, considering that empoisoning is the darkest of offences; but the thread must be well spun and woven together."<sup>a</sup> And, remembering no doubt how the trials of Essex and Raleigh had been conducted, he strongly urged the importance of choosing a Lord High Steward with judgment and authority enough to cut off digressions, and also of taking measures not only for setting forth the evidence in its proper order, but of keeping it within its proper bounds; and, with that view, of directing the Lord Chancellor to assist in the preparatory conferences as well as the Lord Chief Justice;—a precaution of which the King was by this time very well able to understand the motive and the expediency.

This advice was given to the King by Bacon at a personal conference on the 19th of January (as I understand it), and repeated by letter on the 22nd. But the same causes which shortly after postponed the arraignment would naturally postpone the preparations; and it is not till the middle of April that we find any further correspondence about them. Several examinations had been taken in the mean time by the King's direction in search of evidence concerning the Spanish negotiation; and several witnesses had been examined by Coke on his own account in hope of finding some proof of the great Popish poison-conspiracy which he thought he had detected, and the discovery of which he had rather prematurely announced three months before from his seat on the Bench. But nothing of importance came of either; nothing of the first which was thought sufficient to found a charge upon,<sup>b</sup> nothing at all of the second. These things therefore being dropped, the preparations for the trial were resumed.

With regard to the part which the King personally took in these, it is of course impossible to give an account of it which one can assume to be complete, because much of the business was transacted by word of mouth, and of the letters which passed we have no complete collection. But enough remains to justify an inference, in the absence of all evidence to the contrary, as to the spirit in which he acted.

<sup>a</sup> Bacon to the King, 22 Jan. 1615-16.

<sup>b</sup> Whether Somerset had committed high treason in revealing secrets to the Spanish ambassador, appears to have been the point in question. See "Notes for an Indictment" (drawn up by Coke). S. P. Dom. Feb. (?) 1615-16.

Under this head there are two principal questions to be asked : First, what part did he take in the selection of the evidence to be used ; and what directions did he give for the manner in which it was to be handled, in case the Earl stood upon his innocence ? Secondly, what was the nature and object of certain private communications which were made to the Earl by his authority, in hope of inducing him to confess the crime ?

1. With regard to the first, he required from his Attorney-General an account of the plan upon which he proposed to conduct the case, and a sketch of what he meant to say ; and he agreed, upon the Attorney-General's own suggestion, to give certain express directions to him and the other counsel employed ; which were to this effect : in urging the charge they were to abstain from all "bitterness and insulting," remembering that their part was to make Somerset "delinquent to the peers, not odious to the people ;"<sup>a</sup> neither were they "to expatiate or digress upon any other points that might not serve clearly for probation or inducement of that point whereof he was accused."<sup>b</sup> In accordance with this principle, he expressly approved of Bacon's intention to omit altogether, as irrelevant, frivolous, or inconclusive, a great part of the evidence which Coke had collected. And in one place he took exception himself to a passage which it was proposed to produce in support of the charge, on the ground that the words did not naturally bear the meaning put upon them ; a fact which I collect from two or three incidental allusions scattered through the correspondence, but important enough, when the question is in what spirit he was proceeding, to be worth bringing out in detail. The chief difficulty, it must be remembered, which the case presented was to find *direct* evidence of the Earl's personal complicity. The presumptive evidence was strong ; but if he really was a consenting party to the murder, he had taken care to keep himself so much out of sight, that no one could be found who had seen him do or heard him say anything which was conclusive of the fact. The evidence upon which Coke had been content to rely for this rested altogether upon a presumption. The Countess had been seen to go into an adjoining room and to return out of it, having (as was *supposed*) taken instructions from the Earl, who was *supposed* to be within. But though it is true that other evidence was produced to prove that he was there at the time, no one could say that he heard the instructions given. Not to add that, as all

<sup>a</sup> Bacon to Villiers, 6 May.

"The Heads of the Charge." marginal note in the King's own hand. Bacon's Works, vi. p. 97.



this took place long after the death of Overbury, and related only to measures for evading discovery, the clearest proof that the Earl was *then* in guilty collusion with the Countess could have proved no more than that he was an accessory *after* the fact. There was, however, another piece of evidence which would have gone much nearer to prove the Earl's personal complicity in the murder, if it could have been well established. While Overbury was in the Tower, the Countess (then Lady Essex) had written a letter to the Lieutenant, cautioning him as to the disposal of certain tarts; and one sentence ran thus: "*If he should send this tart and jelly and wine to your wife, then you must take the tart from her and the jelly, but the wine she may drink it, if she will, for in that there are no letters I know; but in the tart and jelly I know there is,*"<sup>a</sup> &c.

Being asked whom she meant by "he," she said she meant Somerset.<sup>b</sup> If so, it was a strong piece of evidence against him; for it was good proof that the Countess at that time thought him likely to send tarts which she knew to be poisoned; and it was proposed to use it in that sense and for that purpose. But when the King came to look at the words with the context, it struck him that this was not the natural interpretation of them. He therefore referred the point to the Commissioners for further investigation; observing that "that evidence, as it standeth now uncleared, must *secundum leges sanæ conscientiæ* be laid aside."<sup>c</sup> In pursuance of this direction, Lady Somerset was examined again,<sup>d</sup> and when she said that she meant by "he" not Somerset, but Overbury, that passage was withdrawn.<sup>e</sup>

Now, when we remember that the King was all this time very anxious that the prosecution should be justified by the verdict (for in those days the failure of a Crown prosecution was regarded as a dishonour to the Crown), we cannot but conclude that the part he took in the preparations for the trial was governed by a desire to be just and fair to all parties—at least until we find him doing something irreconcilable with that supposition; of which I have not myself been able to discover any traces.

<sup>a</sup> S. P. Dom. 86, 6; printed in Gardiner's "*History of England, 1603—1616*," vol. ii. p. 387.

<sup>b</sup> 8 Jan. 1616, Gardiner id. *ibid*.

<sup>c</sup> Bacon to Villiers, 13 April.

<sup>d</sup> Bacon to Villiers, 2 May.

<sup>e</sup> "That part of the evidence of the lady's exposition of the pronoun (he) which was first caught hold of by me, and afterwards by his Majesty's singular wisdom and conscience excepted to, and is now by her re-examination retracted, I have given order to Serjeant Montagu (within whose part it falleth) to leave it out of the evidence." Bacon to Villiers, 5 May.

2. With regard to the private communications with Somerset, it might perhaps have been wiser to let them alone; though, without knowing what effect they may have had in keeping him from extremities, it is hard to affirm even that with confidence. But though the policy was questionable, the motive, so far as I can see, was fair and the object good. The public declarations of the Earl's guilt (for which the King was no way responsible) having been so strong, while the proofs appeared on inspection to be in some respects so weak, the result of the proceeding and its effect on popular opinion was a matter of just anxiety; and he no doubt wished extremely that Somerset (if guilty, as he supposed him to be) could be induced to relieve him from the difficulty by a confession. But what inducement had Somerset to confess, if ever so guilty? Suppose him to have been privy to the murder before it was done; still he knew that, having kept so much out of the way, the evidence to connect him with it could not be much or direct. He knew, therefore, that he had two chances of escape. The King—either upon some misgiving as to the force of the evidence, or some fear of meddling with so powerful a man, or some remnant of affection for one who had so lately and so long been his bosom-friend—might shrink from bringing him to trial. And again, if brought to trial, he might be acquitted. Upon what motive should he throw away two such chances of escape? The only motive that could be presented to him was a hope that, if he voluntarily confessed his guilt, he would have a better chance of mercy than if he stood upon his innocence and were found guilty upon the evidence.

Now that the King was from the first strongly inclined to mercy, would have been glad of an excuse for it, and believed (as in those days most people did) that a clear, voluntary, and penitent confession furnished such an excuse,—can hardly be doubted, I think, after the letters and messages which I have already quoted. Had it been doubtful before, this message of the 29th of December now brought to light would have set the doubt at rest: for it contains an intimation of what such a confession might deserve, almost amounting to a promise. “As for himself,” he was to be told, “there is no cause why he should desire not to come to trial, if the proofs be so pregnant that they require it; for, being innocent, upon trial he will be cleared, and so being justified shall receive no disgrace; as with many great persons it hath fallen out, which have been committed to the Tower, and being tried have been cleared for the like offence. But if he be guilty (as God forbid) then must he take a course by his humble confession to plead for mercy; I being to follow the example of Almighty God, who doth not forgive sins till they be confessed and sorrowed for; no more can I shew mercy where



innocency is stood upon, and the offence not made known by confession unto me." Upon that condition I have myself no doubt whatever that the King did at that time (which was long before any attempt had been made to practise upon his fears) secretly intend to use in Somerset's favour his prerogative of mercy; and what he secretly intended to perform, he wished Somerset to be secretly encouraged to hope. He could not give a direct and explicit promise, because a direct promise to pardon him if he confessed would have seemed like a bargain and a bribe to purchase the confession. But he authorised certain persons (the Commissioners themselves first, and afterwards some private messengers) to suggest the hope to him, not as a message from him, but as from themselves. Of the manner in which the Commissioners performed the task we have two reports, one written by Coke and the other by Bacon, but both without date, and so little alike that it is doubtful whether they refer to the same occasion. They agree however in this; neither represents the Commissioners as having said anything false or meant to mislead, and both represent what was said to have been said in vain, for any effect that it seemed to take on Somerset. One effect however it had. It convinced him at last that, unless he could find some new means of diverting the King from his purpose, he would really have to stand his trial. It was rumoured in London about the middle of May that, finding this to be so (which he had not believed before), he had offered to reveal something which it greatly concerned the King and the State to know, and desired to see the Commissioners for that purpose.<sup>a</sup> And it is certainly true that after the King had on the 9th of May, and again on the 13th, sent private messengers to him in great secrecy to renew his former assurances in a form coming still nearer to a promise,<sup>b</sup> he did talk of making an

<sup>a</sup> Edward Sherburn to Dudley Carleton, 17 May, 1616.

<sup>b</sup> "Ye shall therefore give him assurance in my name, that, if he will yet before his trial confess clearly unto the commissioners his guiltiness of this fact, I will not only perform what I promised by my last messenger both towards him and his wife, but I will enlarge it, according to the phrase of the civil law, *quod gratiæ sunt ampliandæ*. I mean not that he shall confess if he be innocent, but ye know how evil likely that is, and of yourself ye may dispute with him what should mean his confidence now to endure a trial when as he remembers that this last winter he confessed to the Chief Justice that his cause was so evil likely as he knew no jury could quit him. Assure him that I protest upon my honour my end in this is for his and his wife's good; ye will do well likewise of yourself to cast out unto him, that ye fear his wife will plead weakly for his innocency, and that ye find the commissioners have, ye know not how, some secret assurance that in the end she will confess of him; but this must only be as from yourself, and therefore ye must not let him know that I have written unto you, but only that I sent you private word to deliver him this message." (*Archæologia*, vol. xviii. p. 352.)

Whether the Commissioners had any such secret assurance I cannot say. If not, this last direction is the

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important disclosure of some kind; though from the terms of the King's answer I infer that it was not an offer of information which it concerned him to possess—that was the device which he had tried before unsuccessfully—but a threat of disclosing something which it concerned him to keep secret. The exact date of it I cannot ascertain; but it cannot have been many days before the trial, and, being his first attempt (as far as I can find) to work upon the King's *fears*, it is important to know how it was entertained. The following confidential letter from the King to Sir George More, through whom the threat was sent, furnishes on this point evidence of the most conclusive kind; and though it is not new in itself, it will probably be sufficiently new in this connection to be worth quoting at full length.

“GOOD SIR GEORGE,

“I am extremely sorry that your unfortunate prisoner turns all the great care I have of him, not only against himself, but against me also, as far as he can. I cannot blame you that ye cannot conjecture what this may be, for God knows it is only a trick of his idle brain, hoping thereby to shift his trial; but is easy to be seen that he would threaten me with laying an aspersion upon me of being in some sort accessory to his crime; I can do no more (since God so abstracts his grace from him,) than repeat the substance of that letter which the Lord Haye sent you yesternight, which is this: if he would write or send me any message concerning this poisoning, it needs not be private; if it be of any other business, that which I cannot now with honour receive privately, I may do it after his trial and serve the turn as well; for, except either his trial or confession precede, I cannot hear a private message from him without laying an aspersion upon myself of being an accessory to his crime, and I pray you to urge him by reason, that I refuse him no favour which I can grant him without taking upon me the suspicion of being guilty of that crime whereof he is accused; and so farewell. JAMES R.

What followed upon this I cannot make out with certainty, for want of exact dates. But it seems, that, upon the very eve of the trial, More reported to the King a new difficulty. Somerset had been seized with some “strange fit,” either was or pretended to be either mad or unable to move, and what was to be done? In answer to which “strange news,” the King directed him to let Lord Hay and Sir Robert Carr (who had already been sent) speak with him first; and “when that

most questionable part of the transaction. It is to be remembered however that the object of it still was, though by a false alarm, to get at the truth; nor was there any danger of its leading to anything else; for, if Somerset knew that he was not guilty, he knew also that his wife would not confess of him.

<sup>a</sup> Archæologia, vol. xviii.



is done," he added, "if he shall still refuse to go, ye must do your office, except he be either apparently sick or distracted of his wits; in any of which cases ye may acquaint the Chancellor with it, so that he may adjourn the day till Monday next, between and which time,<sup>a</sup> if his sickness or madness be counterfeited, it will manifestly appear."<sup>b</sup>

His concluding words are, "If he have said anything of moment to the Lord Haye, I expect to hear of it with all speed; if otherwise, let me not be troubled with it till the trial be past." This therefore would seem to have been the last act of this secret negotiation; of which I have noticed, I think, all the particulars which can be said to be known. For Weldon's picturesque account of Sir George's midnight visit to Greenwich, though not materially differing in substance from my version thus collected, is difficult to reconcile with it in detail; these letters of the King's own hand, which so conclusively establish the fact that Somerset had uttered some threat which he thought would frighten him, being scarcely consistent with a story which represents the whole transaction, from the announcement of the threat to the arrangements made for meeting it, as having passed at a secret personal interview between the King and More in the middle of the night immediately before the trial. And indeed we have other evidence to show that the apprehension of some outbreak of the kind on Somerset's part was of rather earlier date. In a paper in Bacon's handwriting, which appears from internal evidence to have been written three or four days at least before the trial, the following question is proposed as "a question legal for the judges:" "Whether, if my Lord of Somerset should break forth into any speech of taxing the King, he be not presently by the Lord Steward to be interrupted and silenced; and, if he persist, he be not to be told that if he take that course he is to be withdrawn, and evidence to be given in his absence; and whether that may be, and what else to be done." I am inclined to think, therefore, that Weldon confounded two separate stages of the business, and that Somerset did in fact resort to the threat when he found that the King was in earnest, and when the threat failed to move him, resorted to the pretence of sickness or madness.

Whether the opinion of the Judges was taken upon the question suggested by Bacon; or, if it was, what opinion they gave; or whether any preparations were made to act upon it; I cannot undertake to say. But the occasion did not arise. When Somerset consented at last to go, and came to the Bar,—whether it were that he was unwilling to shut the gate against mercy, or that he had been warned that

<sup>a</sup> So in the original.

<sup>b</sup> *Archæologia*, vol. xviii.

if he broke out into invective against the King he would be forcibly silenced and removed; or (which is as likely as anything else) that, though he had used the threat in hope to serve his turn by it, he had really nothing to say,—certain it is that he did neither say nor hint anything about the King whatever. He asserted his innocence confidently, and defended himself boldly, and, after a trial which lasted twelve or thirteen hours, was found guilty by all his triers severally,—no one dissenting. And when I have added that the King, who remained at Greenwich all that day, was observed to be very restless and uneasy until he heard that the trial was over and no attack made upon himself, I believe this account of the part he took in the proceedings against Somerset for the murder of Overbury will be found to be complete, in so far as it can be collected from evidence that can be properly called authentic.

In excluding from it all particulars derived from more doubtful sources I do not mean to imply that all such are without foundation. Many of those supplied by Weldon and Roger Coke and Wilson are probable enough in themselves, and might be combined with my narrative quite well. But I wished first to set forth in order those facts which cannot be doubted; after which we shall be better able to see how many and how much of the rest will stand with them. Sir Anthony Weldon was clerk of the Board of Green Cloth, was living about the Court all the time, and professes to relate things which he had himself seen or heard, or received from those who did see or hear them. Roger Coke belonged to a later generation, but his father was Sir Edward Coke's son, so that he was a legitimate inheritor of traditions from a good source. Arthur Wilson was scarcely a man at the time; but when he wrote his history he was no doubt within reach of many persons who could give him valuable information. But Weldon wrote from recollections of some standing, and those who have moral endurance to read his book through will hardly believe that he could report anything at any time without large infusions from his own very savoury imagination. Roger Coke could but tell us with regard to the secret history of these trials as much as he remembered of what his father or his uncles remembered of what their father had told *them*. And Wilson professes to speak from reports, for which he does not profess to vouch. Whenever therefore the story told by these writers is irreconcilable with the evidence of letters written at the time in the course of business, or with warrants still extant, or with statements publicly made by those who had means of knowing, or even with contemporary letters reporting the passing news of the day, we need not hesitate to set it aside, or to bring it into harmony with them by some conjectural correction. Thus Weldon's statement



that the discovery of the murder came first from an apothecary's boy, who revealed it to the English Agent at Brussels, may perhaps be true: it may have been in this way that Winwood became acquainted with the rumour which he communicated to the Earl of Shrewsbury. But that Winwood had known the fact before from the Countess of Shrewsbury, who had been voluntarily informed of it by Helwysse, and that he had acquainted the King with it, and that they had all kept it close until the agent at Brussels came over with his report, is as much less probable than the account of the matter given by Bacon in court as it is less in accordance with the documentary evidence still extant. So again, Roger Coke's account of the commencement of the judicial proceedings may perhaps be correct thus far. The King's messenger may have reached Coke's chamber at midnight, Coke may have received the message as soon as he woke, attended the King at Royston the same afternoon, and taken his instructions for the investigation. But that his first act was to make out a warrant for the arrest of Somerset, and that it had been executed before he arrived at Royston, is certainly not true. So again, the words said to have been used by the King when Somerset remonstrated against the indignity of being sent for by Coke,—“Nay, man, if Coke sends for *me*, I must go,”—are so very much in his manner that I think they must be genuine. But they must have been spoken when Somerset was first summoned to attend the Commissioners,—not when he was committed to custody.

An examination of the whole story in this way might yield other particulars, probably or possibly true, which would serve to enliven the narrative a little; but when stripped of all they contain of improbable or impossible, I doubt whether they would materially affect the substance of it. And therefore if the field had been a fresh one, and I the first explorer, I should not have thought it necessary to go further. The proceedings, so far as the King was concerned, appear to me—supposing him to have been really governed by the motives which he professed to be governed by—natural, consistent, and intelligible, from first to last, and to require no other explanation. Since, however, the belief that some strange undiscovered mystery still lies beneath has been so general, and given rise to such a variety of strange conjectures, I may be still called upon to explain that fact; and the explanation need not be long.

The particulars of the several theories which have been propounded on the subject it will not be necessary to discuss; because if my own theory be sound it disposes of them all together. It is enough to observe that one general assumption lies at the bottom of them all, and if that goes they must all go. This

assumption is, that the King had himself been a party to some great crime, of which he dreaded the disclosure, and which he knew that Somerset had the means of disclosing. My reasons for rejecting it are, first, that the appearances which have suggested it are one and all explicable *without* any such supposition; and, secondly, that his conduct throughout the whole business was inconsistent *with* any such supposition.

The belief that traces had been discovered of some portentous secret which would not bear the light, was no doubt general at the time among the people: and where evidence is suppressed suspicion naturally falls upon those who had the means of suppressing it. But in this case the existence of such a belief is amply accounted for by the public announcement of the fact which had been made from the Bench. When the Chief Justice of England informed the people that he had evidence proving that the nation had narrowly escaped a danger as great as any that the Children of Israel were delivered from—evidence of a plot which, had it not been discovered, “neither Court, city, nor many particular houses had escaped the malice of that wicked crew,”—what wonder that they expected some horrible iniquity to be presently brought to light? What wonder that, when nothing came, they supposed it had for some mysterious reason been hushed up? Or that when the Chief Justice himself was, not many months after, removed from his place, they remembered the words he had uttered, and concluded that he had forfeited the King’s favour by seeing too far into his secrets? What the evidence was from which he inferred this secret conspiracy, *they* had no means of knowing. But we have. The evidence may still be seen in its original shape—probably all there ever was—as collected by Coke himself; and it may all be clearly traced to the confessions made by Franklin after his condemnation. He had been sentenced on the 27th of November, and would in the ordinary course have been hanged on the 29th. But as he went from the bar he had dropped a hint to those about him that “there were greater persons in this matter than were yet known.” And on the 28th, when questioned on that point by the minister whom Coke sent to press his conscience, he began to throw out hints of awful disclosures which he could make if he liked; and there can be no doubt, on comparing them with Coke’s reports to the King, with his remarks in Court, and with the tenour of the interrogatories which he drew up afterwards in search of further evidence, that this was the stock upon which the whole thing grew. Nothing came out of it, simply because there was nothing in it. Some portions of the evidence elicited by those interrogatories were indeed designed by Coke to be introduced by way of aggravation into the charge against Somerset, but they were struck out by Bacon,



with the King's express approbation,\* as not of weight and not to the purpose; a respect which he considered due to the dignity of Justice. Any suppression of evidence other than this, there is, so far as I can find, not the shadow of a reason for suspecting.

The appearances, therefore, which first put it into people's heads to suspect a mystery, and are still supposed to imply the existence of one, may be all explained without supposing anything more than this: that a condemned felon would not scruple to tell lies, when he found that by telling them with due respect to the appetite of the questioner he could gain a few days' respite from the gallows. And therefore whatever inferences concerning the King's supposed crime rest upon these, must, I conceive, be withdrawn. Which being done, the only thing remaining to be accounted for is Somerset's threat to "tax him" with something, and his uneasiness while that threat was hanging over him.

But the utterance of such a threat by Somerset is as easily explained as the offer of fresh disclosures by Franklin. It was his sole remaining chance of deterring the King from bringing him to a public trial. And as for the King's uneasiness, is there any man who in such a case would not have *felt* uneasy? are there many men who would have been able to conceal the feeling? A proud, bold, unscrupulous, desperate man—a man too who was well known to have been trusted by the King for many years with his most secret thoughts—had declared that if he brought him to trial he should repent of it, for he would publicly accuse him of being himself implicated in the same crime; (for, whatever Somerset meant, this is the sense in which the King understood him.) Such an accusation made against a king, who can not be brought to trial for it, is a breath which blasts the reputation for ever, a stain which cannot be wiped out, though supported by no evidence at all. To a thoughtful man, full of apprehensions, it must have threatened a whole brood of mischiefs and dangers. The fear of all this, though it did not deter the King from his duty, did (and very naturally did) disturb his tranquillity. Though he resolved to confront the danger, it is not to be denied that he dreaded it. "I will not omit to acquaint your Lordship," says one of Sir Dudley Carleton's correspondents, "that the day of the late Earl of Somerset's arraignment his Majesty was so extreme sad and discontented, as he did retire himself from all company, and did forbear both dinner and supper until he had heard what answer the said Earl had made. It

\* "As for all the subsequent evidences, they are so little evident, as *una litura* may serve them all." The King's note in the margin of Bacon's letter. (Lambeth MSS. 933, 125.)

seemed something was feared should in passion have broken from him ; but when his Majesty had heard that nothing had escaped him more than what he was forced to answer to the business then in hand, his Majesty's countenance soon changed, and he hath ever since continued in a good disposition."<sup>a</sup> Now, knowing (as the writer of this letter did not know, but we do,) what it was that the King had to fear, and with what reason, can anything be conceived more natural than all this? What is there in it so strange, that we must needs believe him guilty of murder or worse, though two centuries of scandalous curiosity have not revealed a tittle of evidence to countenance the suspicion, more than the circumstance which I have just read an account of?

But to say that in order to explain the facts it is not necessary to suppose the King guilty, is not to say all: I am prepared to maintain further that if you suppose him guilty it is impossible to explain the facts.

By the supposition, the King has done something of which he dreads the disclosure, and of which Somerset knows. An inquiry is raised which implicates Somerset in a capital charge, and places his fate at the King's disposal. Had he been afraid of provoking him, he might easily, keeping the inquiry close and in his own hands, have managed it so as to keep him in temper by secretly favouring or promising to favour him. What does he do? He leaves it all to Sir Edward Coke—the most unsubservient, intractable, self-willed, contradictory, and indiscreet man in his dominions—a man whose pride was in his reputation for probity and independence, and who was as staunch as a bloodhound in hunting out evidence; leaves it to him without any restriction upon his discretion, or any watch kept over him; puts the probe into his hands without any caution except a solemn injunction, as he would avoid God's curse, to search it to the bottom.<sup>b</sup> Again; after all Coke's pains, the evidence against Somerset is found to rest chiefly upon presumptions, and is certainly not conclusive. How easily, and even plausibly, he might have used that circumstance as an excuse for dropping the prosecution, and so shunning the thing he feared! What does he do? He

<sup>a</sup> E. Sherburn to Carleton, 31 May, 1616. S. P. O. It appears, however, from Mr. Gardiner's extracts from Gondomar's despatches, that the King spent great part of that day in talking with Gondomar about the Spanish match.

<sup>b</sup> The words said to have been addressed by him to the Judges at Whitehall, concluding with this famous imprecation, rest only on Weldon's authority. Whether they were truly reported or not, and *when* they were spoken, if spoken at all, is immaterial; for all that they *meant* was repeated by him in writing several times over, as we have seen. From Gondomar's despatch (Oct. 30) it would seem that they were addressed to the Counsel when he gave Coke his first Commission.



shows only the more anxiety to press Somerset to a confession, and to have the case sifted to the bottom, with an unshrinking determination to bring it to a public issue in court. Once more; Somerset, finding him in earnest, directly threatens, that, if the trial be not forborne, he will have his revenge by making the dreaded disclosure. Being so threatened, how easy to have soothed him by secret messages, intimating that though tried he should not be hurt; that though public opinion required the public proceeding, yet the charge should be so lightly pressed as to insure an acquittal! What does he do? He refuses to hold any private communication with him until the trial be over. Lastly, when the trial comes on, though the threat is fresh in his ears, does he hang out signs of hope? Does he fill the court with Peers whom Somerset may recognise as friends, or select a president who is likely to be partial? Far from it. The person selected for Lord High Steward was the Lord Chancellor, whose previous appointment as Commissioner to assist in the investigation Somerset had objected to, on the ground of supposed personal hostility; and as for the selection of the Peers, though I think I have seen it remarked that there were some of them who ought to have been excluded as personal enemies, nobody has yet thought of objecting that the court was packed with his friends. And very evident it is, that, though he did not desire to take any unfair advantage either way, the King's anxiety was not for an acquittal, which would have relieved him at once from all further apprehension and difficulty, but for a conviction.

You see, therefore, that there is not a single movement, from the beginning to the end, such as you would have expected from him had he been acting under a guilty consciousness that his reputation was in Somerset's power: whereas if you suppose him to have been moved at first only by a natural horror of the crime and strong zeal for justice, and alarmed at last only by the fear of what a proud man, falling suddenly from such a height to such a depth, might in the bitterness of revenge or jealousy do or say,—there is not a single passage in his whole proceeding which you might not have expected.

Nor were the pardons which he granted soon after, to the Countess first and then to the Earl, inconsistent with these suppositions, if they be rightly considered. The Countess, though in some respects the guiltiest of the whole party, was the first and the only one of them who confessed before conviction. In showing mercy to a confessing penitent the King thought he was following the highest example of all; and indeed, if he had not done so, he might have been justly charged, if not with breaking a promise, at least with deceiving a hope

which he had himself encouraged. And for the Earl, though he had refused to deserve mercy on that condition, yet that very refusal, maintained as it was to the end with resolution and consistency, was a fact tending to strengthen the doubts for which the gaps in the evidence certainly left room,—doubts whether he was really an accessory before the fact. His behaviour at the trial was felt at the time by spectators fully predisposed to believe him guilty, as something unexpected and in his favour. “The only thing worth note in him” (writes Sherburn to Carleton, after observing that his answers to the charges were “poor and idle,”) “was his constancy and undaunted carriage in all the time of his arraignment; which as it began, so did it continue to the end, without any change or alteration. His Lordship, though he would not confess himself guilty, but stood upon his innocence, yet hath received the same sentence which the day before was given to his Lady,”<sup>a</sup> &c. Nor did the passing of this sentence produce any change in him in this respect. The nearest approach to a confession which could ever be extracted from him, either before or after, was an admission made to Coke in the preceding February that “the presumptions against him might be such, having consented and endeavoured with others the imprisonment of Overbury, &c. as that, the same being enforced by wit and art against him, the extent of law might lay hold of him and find him guilty, being never so clear.”<sup>b</sup> To this day the question of his guilt remains doubtful, and the resolution with which he stood upon his innocence is felt to be a part of the evidence. “When these two letters are read,” (says the late Professor Amos, speaking of certain unsuccessful “attempts to overcome the Earl’s resolution,”) “the Earl’s perseverance in defending his innocence will appear to be a feature in his conduct deserving of much consideration in passing our judgment upon his guilt or innocence:”<sup>c</sup> to which I may surely add—though it be an inference for which Professor Amos was little prepared—that it was deserving of no less consideration from the King in determining whether he should allow the sentence to be carried into effect. As it was, the punishment which fell upon both of them, even supposing both to have been equally guilty, was amply sufficient for example; and, though there have seldom been criminals who had less popular sympathy to plead for them, there is no reason to suppose that the mercy extended to them was at the time disliked. Another of Sir Dudley Carleton’s correspondents, writing on the 29th of May—only five days after the trial,—describes it as the general wish that the

<sup>a</sup> Sherburn to Carleton, 31 May, 1616. (S. P. O.)

<sup>b</sup> Coke to the King, 8 Feb. 1615-16.

<sup>c</sup> “Great Oyer of Poisoning,” p. 411.



King might spare Somerset. "Where a man converseth" (he says), "he finds all spirits induced to favour, pity, and wish well to this personage condemned." Yet he seems himself to have believed him to have been not only an accessory before the fact, but the original actor and mover. "The Lady" (he adds) "comes into the business by him and by his means." . . . "The pity I write of cannot proceed from thence that he did but serve another's purpose."<sup>a</sup>

I am, &c.

JAMES SPEDDING.

<sup>a</sup> Edward Palavicino to Carleton, 29 May, 1616. (S. P. O.)

VII.—*The Genuineness of the Holy Sepulchre.* By THOMAS LEWIN, Esq.,  
M.A., F.S.A.

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Read February 15th, 1866.

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THE great aim of history is to hold up the mirror of the past; but this cannot be done without a knowledge of places as well as of persons. Topography not only illustrates, but also corrects, history: Josephus, for instance, speaks of Jerusalem as having contained occasionally 3,000,000 inhabitants; and in the Jewish War he raises up, by the magic stroke of his pen, countless hosts that never were born; but when we come to examine the localities, we see at once that his statements are preposterous, and that we must accept them at an enormous discount. If topography be so essential an ingredient to history, the more important the events, the more necessary the investigation of the places where the scenes were enacted. It is for this reason that so much attention has of late been directed to the topography of Judea, and of Jerusalem in particular. The inquiry as to the latter has perhaps excited the greater interest from the extreme difficulty with which it is attended. Our information, however, is so rapidly accumulating, that candid minds are now fast converging to a central point. One of the most perplexing questions has been whether the so-called Holy Sepulchre be actually the spot in which the body of our Lord was laid; and, having directed my attention to this subject more or less for about a quarter of a century, I hope I may, without presumption, bring under the notice of the Society the grounds upon which I have formed my conclusions.

In the first place, a strong feeling in favour of the genuineness of the Holy Sepulchre arises from the fact that for more than 1,500 years at least<sup>a</sup> this has been the traditional site: here for so many centuries have Christians of all nations

<sup>a</sup> See *post* the testimony of the Bordeaux Pilgrims and of Eusebius.



and of all creeds come to bow with reverence. It is not the case of one sect advocating one site, and another sect another site, but the tradition has been steady and uniform that here was our Lord entombed. This argument carries to my own mind the greatest weight. *Jews* may have been banished from Judea from the time of Hadrian to the time of Constantine, but numerous *Christians* (the converts from *heathenism*) must from the first have sojourned at Jerusalem, or in the immediate neighbourhood, and I do not think it possible that they could have let slip from their memory the scene of such momentous events as the burial and resurrection of our Lord. The Christian child to whom the Sepulchre was pointed out in the year of the crucifixion (A.D. 33) would cherish it in his recollection as long as he lived, which might be until the close of the first century at least, and long after the destruction of the city by Titus. Even the Apostles themselves remained at Jerusalem for many years after the resurrection, say until A.D. 55, and must they not have often conducted their converts to the Holy Sepulchre? and, if so, how could all trace of the site of it have been lost?

As the Holy Sepulchre thus recommends itself as genuine *primâ facie*, we are led to ask what is the objection urged against it. The only one of any weight appears to be this, that our Lord, as all admit, was buried *without* the city; whereas the so-called Holy Sepulchre is now *within* the city. But it is equally well known that the outer wall on the north, commonly called the third wall, was begun by Agrippa in A.D. 43, and was not completed until some time during the Jewish war, which broke out in A.D. 66 and ended A.D. 70. The only wall which girt in the city on the north in the time of our Lord, was that now generally known as the second wall. If, therefore, it can be shown that the Holy Sepulchre was without the second wall the objection is answered. A question about the course of walls must involve minute details which cannot be followed without attention, but with a little patience we can arrive, according to my judgment, at a satisfactory result. The difficulty is to find some starting point which we can rest upon as an indisputable basis. Such a substratum presents itself in the citadel or castle of David, on the right hand of the Jaffa Gate. This can be proved demonstratively to be identical with the palace of Herod, afterwards the Prætorium or residence of the Roman Procurator. Few persons who have considered the subject will be disposed to question this; but I proceed to adduce the several arguments upon which our assertion is founded.

Josephus describes the High Town or Upper Market as a platform surrounded by ravines on the west, south, and east sides,\* and as standing toward the north

\* Bellum, v. 4, 1.

on a λόφος or cliff.<sup>a</sup> The palace was at the *north-west* corner of this platform, for Titus, after the capture of the third or outmost wall and the second or middle wall, assaulted the palace from the north,<sup>b</sup> and then from the west,<sup>c</sup> which he could only have done on the supposition that the palace looked northward and westward, or in other words was situate at the north-west corner. While the whole north wall of the High Town stood on this λόφος or cliff, the three towers in the north wall of the palace, viz. Hippius, Phasaelus, and Mariamne, were erected upon a rocky crest which stood out by itself.

Compare this description with the present features.<sup>d</sup> As you enter the Jaffa Gate and walk down David Street, and Temple Street which continues it, to the Haram, you observe a rise of the ground on your right hand.<sup>e</sup> It has been much discussed whether the Tyropœon Valley began or not at the Jaffa Gate, and ran eastward until it turned down to Siloam, and Josephus nowhere says that it did; but he does state, both directly and indirectly, that the High Town on its north side was precipitous,<sup>f</sup> and that the north wall of the High Town stood upon a cliff;<sup>g</sup> and in conversing with Mr. Schick, a resident architect who erected the English church just opposite the Citadel, I remarked that he invariably termed this abrupt rise of the ground "The Cliff of Sion," using the very term employed by Josephus so many centuries before. However, I have no doubt that in the time of Josephus a considerable valley ran along David Street and Temple Street, and so formed the commencement of the Tyropœon Valley, which gradually deepened as it approached the Haram, when it deflected southward to Siloam. Even as matters now stand, the Jaffa Gate itself is situate in a depression between the citadel on the south and the hill on the north.<sup>h</sup> Then, as you enter and begin to descend David Street, eastward of the first street leading north, there is a visible ascent,<sup>i</sup> and when you come to the open space once occupied by the Hospitallers, the ground on the north is from 12 to 15 feet higher than the street.<sup>k</sup> On the south side there is still quite a sharp ascent;<sup>l</sup> and at the first turning to the right after passing the

<sup>a</sup> ἐφ' ὑψηλῷ λόφῳ, Bell. v. 4, 4. περικρημνον οὔσαν, vi. 8, 1.

<sup>b</sup> Bell. v. 7, 3, where Titus is represented as encamping within the third wall, and as assaulting Hippius, one of the towers of the palace.

<sup>c</sup> Bell. vi. 8, 1.

<sup>d</sup> See the accompanying Plan (Plate I.), which is based on the Ordnance Survey lately made by the Expedition to the Holy Land under Captain C. W. Wilson, R.E.

<sup>e</sup> Robinson, Biblical Researches, i. 264; iii. 208.

<sup>f</sup> Bell. vi. 8, 1; v. 4, 4.

<sup>g</sup> Bell. v. 4, 4.

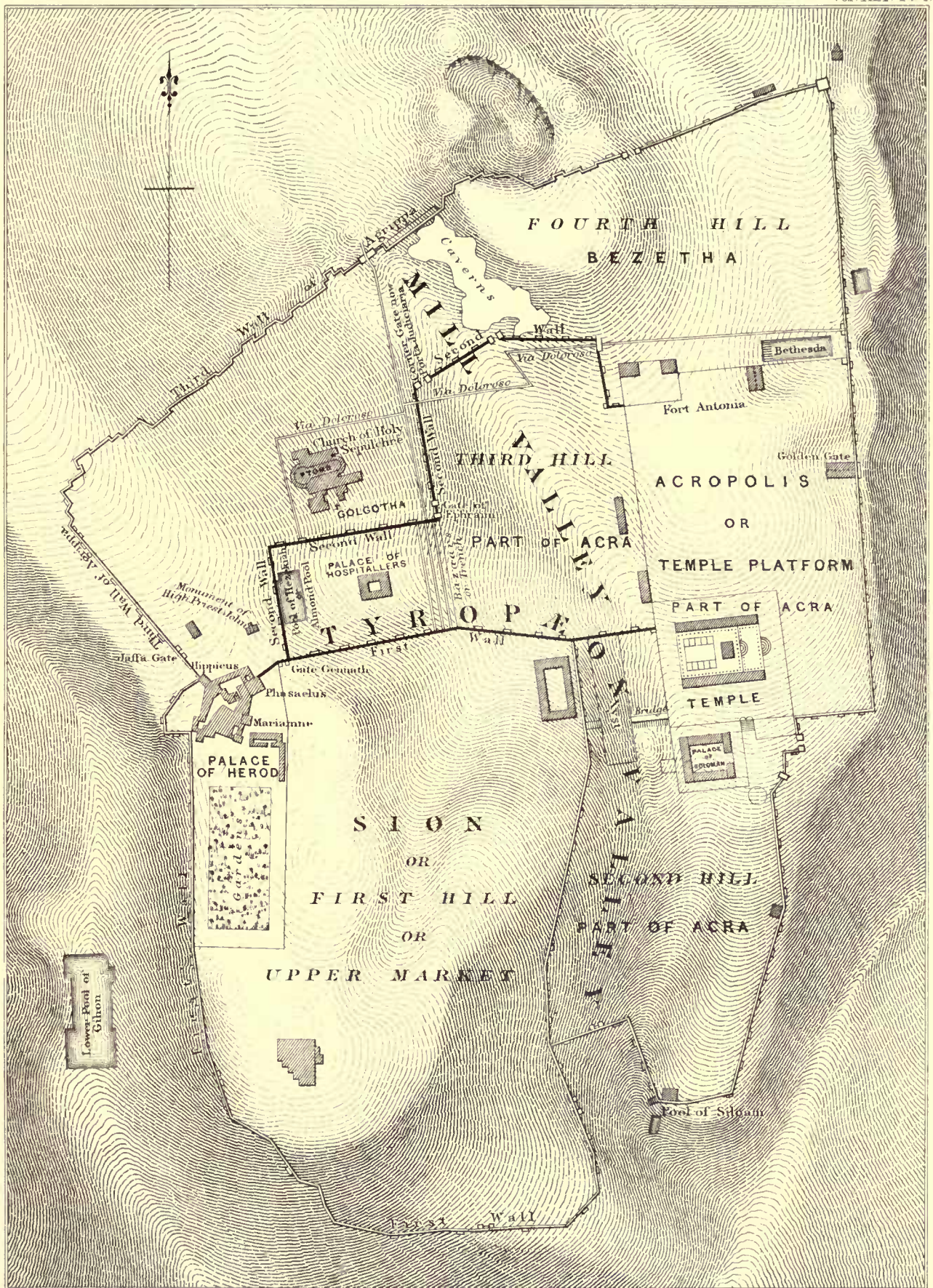
<sup>h</sup> Robinson, Bib. Res. iii. 208.

<sup>i</sup> Robinson, Bib. Res. i. 265.

<sup>k</sup> Robinson, Bib. Res. iii. 167

<sup>l</sup> Robinson, Bib. Res. i. 264, 265. Tobler, Dritte Wanderung, 233.





Kell Bro<sup>s</sup> Lith London.

PLAN OF JERUSALEM.







Citadel I counted myself about twelve steps up to Sion.<sup>a</sup> On reaching the top you find yourself on a level with the roofs of the houses below.<sup>b</sup> It is also observable that of the two great sewers that drain Jerusalem, while one of them runs from the Damascus Gate down the Mill Valley, the other is carried down David Street,<sup>c</sup> and this alone would prove a natural hollow in this direction. Such is the present state, but let us penetrate below. Excavations have established the fact that the hard rock comes near to the surface both on the north and south of David Street, while in David Street itself there is an enormous accumulation of *débris*. Let us look first to the north side of David Street. Just *without* the Jaffa Gate on the north, where is the present Custom-house, it is rock.<sup>d</sup> At the new buildings of the Latin Patriarch, a little to the north of David Street, *within* the walls, it is rock,<sup>e</sup> and the Pool of Hezekiah, a little due east of this spot, is sunk in the rock.<sup>f</sup> If we turn to the south side of David Street, the Citadel itself is erected upon the crest of a rock, and to the east of this is the Prussian Hospital, the foundations of which are laid upon the rock,<sup>g</sup> and 350 feet to the east of this it is also rock.<sup>h</sup> Now, what is the nature of the substratum between these two ridges of rock? On excavating at the corner of the first street on the left, after entering the Jaffa Gate, and therefore at a spot between the Citadel and the buildings of the Latin Patriarch, there was found in digging for foundations a depth of rubbish not less than 40 or 50 feet.<sup>i</sup> At a point further down, at the junction of David Street with Christian Street, and therefore between the Pool of Hezekiah or its immediate vicinity on the north, and the Prussian Hospital on the south, the foundations of an ancient chapel were discovered at the depth of 30 or 40 feet below the present surface.<sup>k</sup> If we descend still further down David Street the same phenomenon appears as you pass from David Street into Temple Street, that is, excavations have been made there to the depth of 25 feet without reaching the rock,<sup>l</sup> so that the natural soil might rest still many fathoms lower.

Again, Mr. Schick, the European architect before referred to, and who possesses more local knowledge of nether Jerusalem than perhaps any other person living, informed me that in digging for a foundation between the Cliff of Sion and the

<sup>a</sup> See Lewin's *Siege of Jerusalem* by Titus, p. 215.

<sup>b</sup> Robinson, *Bib. Res.* i. 264.

<sup>c</sup> Pierotti, vol. i. p. 15.

<sup>d</sup> Pierotti, vol. i. p. 19.

<sup>e</sup> *Ibid.*

<sup>f</sup> Robinson, *Bib. Res.* iii. 185. Tobler's *Dritte Wand.* 234.

<sup>g</sup> Pierotti, vol. i. p. 19.

<sup>h</sup> *Ibid.*

<sup>i</sup> Mr. Whiting's Letter, Robinson, *Bib. Res.* iii. 632.

<sup>k</sup> *Ibid.* and see Robinson, *Bib. Res.* 184.

<sup>l</sup> Tobler's *Dritte Wanderung*, 234, 255.

site of the Hospitallers' Palace, he excavated to the depth of 60 feet without finding the natural soil. The substratum consisted, to use his own words, of "only very small stones looking like the filling up of a trench,"<sup>a</sup> and it is remarkable that if the palace of Herod was where we have placed it, this would be the very spot where Titus cast up one of his mounds against the High Town. In the time of Brocardus, a monkish writer of the thirteenth century, the valley had been somewhat obliterated, but was still distinctly traceable.<sup>b</sup> At the present day, as observed in Murray's Handbook, if you station yourself on the roof of the Serai at the north-west corner of the Haram, you can follow the depression of the valley all the way from the Jaffa Gate to the Haram. If, as some insist, there is no valley along David Street, how comes it that no one has yet discovered the rock in this part, notwithstanding all the searches that have been made, and while the rock is found on the sides of this line both north and south? There is a curious fact mentioned by Kadi-Mejr-ed-din, who wrote A.D. 1495. "David Street," he says, "was so named from a subterranean gallery which David caused to be made from the gate of the chain (the chief entrance to the Haram) to the Citadel, called the Mickrah of David. It still exists, and parts of it are occasionally discovered. It is all solidly vaulted."<sup>c</sup> This tradition of a subterranean gallery (erroneously attributed to David) is to some extent borne out by recent discoveries, for between the little street of Kanater Mar Botrûs and David Street, *i. e.* just opposite the site of the Hospitallers' Palace, a partial chain of underground vaults is still seen,<sup>d</sup> and they have again been found halfway along David Street at the Bazaars,<sup>e</sup> and they appear again under the raised embankment leading to the gate of the chain at the entrance to the Haram.<sup>f</sup> All this tends to confirm the fact of a natural valley in this part.

The broad platform or hill which has this fall of ground on the north, and is also surrounded on the west and south sides by the valley of Hinnoim, and on the east by the Tyropœon Valley, is of so peculiar a character and is so isolated from the rest of the city that it must have always borne, as it still bears, a distinct and peculiar name. It was originally called Jebus, and was the city of the Jebusites, and is the High Town or Upper Market of Josephus, and for at least 1500 years (that is since the days of the Bordeaux Pilgrim) has been known as Sion. If we can assume that the quarter now called Sion is the High Town of

<sup>a</sup> Lewin's Siege of Jerusalem by Titus, 218.

<sup>c</sup> City of the Great King, 397. Tobler, i. 216.

<sup>e</sup> Tobler's Dritte Wanderung, 234.

<sup>b</sup> Robinson, Bib. Res. iii. 205.

<sup>d</sup> Lewin's Siege of Jerusalem by Titus, p. 221.

<sup>f</sup> Tobler's Dritte Wanderung, 225.



Josephus, the Castle of David must necessarily be the Palace of Herod, for the palace was at the north-west corner of the High Town, and the Castle of David is at the north-west corner of Sion.<sup>a</sup>

So much for the general position of Herod's Palace, now the Castle of David; but, if we descend to details, we shall be struck by the increasing cogency of the proofs of the identity of the two. The Palace of Herod was defended by the three strong towers before mentioned, Hippicus, Phasaelus, and Mariamne.<sup>b</sup> The chances would be greatly against any citadel containing exactly that number of towers; yet, on looking at the Castle of David, we discover just that number, and no more. The three towers of Herod were built upon a rock,<sup>c</sup> and the three existing towers are also founded on the rock.<sup>d</sup> The three towers of Herod were square and solid up to a certain height,<sup>e</sup> and the present towers are also square and solid for some height from the base.<sup>f</sup> But further, the rock on which Herod's three towers were erected was 30 cubits or 45 feet high,<sup>g</sup> and the rock which sustains the present castle is 42 feet high; so that 3 feet only are wanting to correspond with the historian's statement.<sup>h</sup> Hippicus was the most westerly of the three towers, and was a square of 25 cubits;<sup>i</sup> and the base of the most westerly of the present towers is ancient, and nearly of those dimensions.<sup>k</sup> Phasaelus was the middle tower of Herod's Palace, and was 60 feet square, or 240 feet in circumference, and was solid to the height of 60 feet;<sup>l</sup> and the middle tower in the present castle answers to this description, for, though not quite a square, but rectangular, it is a square to the eye, and the circumference is 253 feet,<sup>m</sup> and therefore exceeding Josephus's measurement by 13 feet only. But what is more striking still, the lower part of the tower, to the height of no less than 40 feet, is actually solid, without any known entrance either above or below ground; and there is besides an accumulation of rubbish at the foot, so that if this were cleared away it might be found that the whole height of the solid part was, as Josephus states it, 60 feet. The tower is composed of bevelled stones, and is evidently the work of the Herodian age, and is commonly called Hippicus, which is one of the vulgar errors, as it is certainly Phasaelus. Mariamne, the third tower in Herod's Palace, has been destroyed, with the exception of the base of it, which to the height of 5 feet is solid, and cased with large stones roughly

<sup>a</sup> In the Old Testament, Sion signifies the whole mountain shut in between the Valley of Hinnom and the Valley of Jehoshaphat, and is equivalent to Jerusalem as a whole, which occupied the mountain. In the Maccabees, however, Sion signifies the Temple Inclosure, now the Haram.

<sup>b</sup> Bell. v. 4, 3.

<sup>c</sup> Bell. v. 4, 4.

<sup>d</sup> Pierotti, vol. i. p. 29.

<sup>e</sup> Bell. v. 4, 3.

<sup>f</sup> Pierotti, vol. i. p. 29.

<sup>g</sup> Bell. v. 4, 4.

<sup>h</sup> Williams, Holy City.

<sup>i</sup> Bell. v. 4, 3.

<sup>k</sup> Pierotti, vol. i. p. 29.

<sup>l</sup> Bell. v. 5, 3.

<sup>m</sup> Robinson, Bib. Res. i. 308.

rusticated.<sup>a</sup> The old materials have been built into the present tower, which stands a little back towards the south-east, just where we should expect to find Mariamne; for all three towers were erected on one isolated crest, and they could not therefore have stood in a straight line, but must have been clustered about the rocky eminence. Again, while the towers of which we have spoken lay on the north of the palace, the royal apartments in which Herod and his family resided lay to the south, and next to them in the same direction were spacious gardens laid out in walks, with fountains and dovecots, and all the appliances of luxurious Eastern life; and to the south of the Castle of David are, to this day, extensive gardens reaching along the western wall, 650 yards in length and 250 yards in breadth,<sup>b</sup> so that this part has been cultivated as a garden for about 1,900 years.

It may be tedious to demonstrate further the identity of the Castle of David with Herod's Palace, but it is absolutely necessary that we should have some certain and indisputable point to start from. I will therefore test the identity in another way. When Titus had taken the third or outer wall, and pitched his camp between that and the second wall, he assaulted the northern wall of the High Town at the part which lay between the monument of the High Priest John, which was a conspicuous feature in the siege, and Hippicus, one of the towers of Herod's Palace<sup>c</sup>; but close to the monument of John, that is to say, only 45 feet from it, was the Amygdalon or Almond Pool.<sup>d</sup> Hence, it is clear that to the north of the palace, and at only a short distance from it, was a pool of sufficient dimensions to be a well known mark. This corresponds exactly with the facts. To the north-east of the Castle of David, and at only about 100 yards from it, is the Pool of Hezekiah, which is universally admitted to be the Almond Pool of Josephus. It is, indeed, the only pool within the walls of the city, with the exception of the Pool of Bethesda, which is in just the opposite quarter above the Haram, and could not, upon any conceivable theory, have been the pool referred to by Josephus.

I will only extend this branch of the argument by one further observation. We read that on the western side of the Temple were four gates, one of which, the most southern, led over the bridge to the palace,<sup>e</sup> from which I collect that the

<sup>a</sup> Pierotti, vol. i. p. 29.

<sup>b</sup> Handbook for Syria.

<sup>c</sup> Bell. v. 7, 3.

<sup>d</sup> κατὰ βόρειον κλίμα τὸ ἔργον ἦν καὶ κολυμβήθραν Ἀμυγδαλῶν προσαγορευομένην· τούτου δὲ τὸ πεντεκαίδεκατον ἀπὸ τριάκοντα πηχῶν ἔχον κατὰ τὸ τοῦ ἀρχιερέως μνημεῖον. Bell. v. 11, 4.

<sup>e</sup> Ἡ μὲν εἰς τὰ βασίλεια τείνουσα, τῆς ἐν μέσῳ φάραγγος εἰς δίοδον ἀπειλημμένης. Ant. Jud. xv. 11, 5. That the bridge is here referred to see Ant. Jud. xiv. 4, 2; Bell. vi. 6, 2; vi. 8, 1; ii. 16, 3; i. 7, 2.



bridge led by a direct route to the palace, for the expression would hardly be correct (as the palace lay at some considerable distance) if the road pursued a devious course. The abutment of this bridge on the west side of the Temple is still to be seen in the western wall of the Haram, near the southern end, and if a road be carried in a straight line westward in the same direction with the bridge, it would strike the very spot at which, on other grounds, we have placed the Palace of Herod.

All these circumstances, some of them of a most minute character, and beyond the reach of accident, have satisfied me without the least misgiving or hesitation, and I hope will satisfy others, that the Castle of David occupies the site of the Palace of Herod, or rather of the Citadel on the north side of the palace, in which stood the three famous towers Hippicus, Phasaelus, and Mariamne; and, having made good this stand-point, we now proceed to the consequences which flow from it.

The first wall, or that of the High Town, commenced on the north according to Josephus, at Hippicus, and then uniting Hippicus with the two other towers, Phasaelus and Mariamne, went eastward along the cliff of the High Town to the Temple. In other words, the first wall began at the tower next the Jaffa Gate in the Castle of David, and then ran successively to the other two towers in the Castle of David, and then struck off in a straight line eastward along the Cliff of Sion to the Haram. If I am not mistaken, the wall itself was discovered in 1862, when I happened to be at Jerusalem. I have already mentioned a flight of twelve steps from David Street up to the Cliff of Sion on the south. At the top of the steps the little street called Kanater Mar Botrûs runs from west to east, parallel to David Street. Between this street and David Street a house was being erected for Dr. Chaplin the English physician, and in excavating for a foundation the workmen came to a small tower nearly square, measuring in the interior .8 feet from north to south, and 9 feet from east to west. On the west side of the tower was a gate 5 feet wide and 18 feet high. At the distance of 64 feet to the east was discovered another tower of similar dimensions, and the two towers were connected by a massive wall. Unfortunately I omitted to take a note of the breadth of the wall, but it was very considerable, for Mr. Schiek, after searching in vain for a solid foundation, erected the wall of the house upon the back of the old wall.<sup>a</sup> What is very remarkable is, that this wall was in the direct line with the third tower in the Castle of David; and we have seen that according to Josephus the first wall struck off eastward from Mariamne, the third tower in the Palace of

<sup>a</sup> Lewin, *Siege of Jerusalem by Titus*, 216.

Herod. Whether the old wall thus brought to light be or not the veritable first wall of the High Town, it is clear that the first wall must have run in this direction, for its course was from west to east, and was just south of the Almond Pool, now the Pool of Hezekiah. We have next to inquire what was the line of the second wall.

The account of Josephus is that "the second wall started from the Gate Gennath in the first wall, and, compassing only the northern quarter, ran up to Antonia."<sup>a</sup> Where then is the Gate Gennath to be placed? When the outer or third wall was assaulted by Titus, the Jews were the less anxious about the city, that is the High Town, because, if the outer wall were taken the city would be still defended by two walls,<sup>b</sup> from which it must be inferred that the Gate Gennath was at least close to the three great towers of the palace, for the city could not be said to be still behind two walls if there were a considerable space protected only by one wall. On the other hand, when Titus had taken the outer or third wall and before he had taken the second wall, he assaulted the High Town from the north,<sup>c</sup> so that there was certainly some interval or portion of the first wall lying between the third wall, which started from Hippicus, and the second wall, which started from the Gate Gennath.

There are some further particulars mentioned in the siege of the city by Titus which will enable us to fix with some precision where the Gate Gennath actually stood. When Titus reconnoitred the city to select a point of attack, he came to the resolution of assaulting the third or outer wall opposite the monument of the High Priest John, and the reason assigned is, that if he carried the outer or third wall the road would then be open to him against the High Town without taking the second wall,<sup>d</sup> and when he had mastered the outer or third wall he accordingly delivered the assault against the High Town along that reach of the inmost or first wall which lay *between the monument of John on the east and the Tower of Hippicus on the west.*<sup>e</sup> The exposed part of the first wall was therefore the space from the monument of the High Priest John to the Tower Hippicus; but the exposed part of the first wall was also between the second wall (*i.e.* the Gate Gennath where it commenced) on the east, and the Tower of Hippicus on the west. The Gate Gennath therefore was at the monument of the High Priest John; and as we have identified Hippicus with the present tower at the Jaffa Gate, if we can only find the site of the monument of the High Priest John, we shall have ascertained the length of the interval or portion of the first wall which lay

<sup>a</sup> Bell. v. 4, 2.

<sup>b</sup> Bell. v. 7, 2.

<sup>c</sup> Bell. v. 7, 3.

<sup>d</sup> Bell. v. 6, 2.

<sup>e</sup> Bell. v. 7, 3.



between the outer or third wall, which began at Hippicus, and the middle or second wall, which began at the Gate Gennath. Now when Titus had failed in his attempt to carry the High Town by assault, he proceeded to cast up a bank or mound against it, and this was at the monument of the High Priest John;<sup>a</sup> and on this being destroyed by the Jews, Titus waited until he had captured the middle or second wall, and then cast up two mounds, *one at the monument of the High Priest John, and the other at the Almond Pool, and it is stated that the two mounds were only 45 feet apart.*<sup>b</sup> But the Gate Gennath was, as we have seen, at the monument of the High Priest John, and the monument of the High Priest John was only 45 feet from the Almond Pool, now the Pool of Hezekiah. The Gate Gennath then, at which the second wall commenced, must have stood close to the Pool of Hezekiah, which is a little to the north-east of the Castle of David. That, in fact, there was a gate at this very point is evident from the narrative of Josephus, for when Titus was casting up the first mound against the High Town, after the capture of the outer or third wall, and before the capture of the middle or second wall, the Jews sallied out of this gate and made an onslaught upon those who were working at the mound.<sup>c</sup>

It may be admitted that if the second wall, as we have placed it, went due north even for a few furlongs from the Gate Gennath, it would include the Holy Sepulchre; but as candour compels us to make this concession, so truth enables us to trace it in a direction which will at once remove the difficulty.

As the reason with many for giving so great an extent to the middle or second wall is the impression that the Low Town, confined as they suppose within the second wall, would thus be reduced to insignificance, I must remark *in limine*, that there can be no greater error than to consider the Low Town as limited only to the part bounded by the second wall. Josephus states most distinctly that the Low Town was seated chiefly on the eastern ridge, and that it was divided from the western ridge, the higher of the two ridges, by the valley which ran to Siloam, and that the Low Town reached all the way from Fort Antonia on the north to the Pool of Siloam on the south, so that it comprised the present Haram, and also the whole of Ophel below it. According to Josephus, Fort Antonia, now the Serai, was in the Low Town,<sup>d</sup> and the Temple was in the Low Town,<sup>e</sup> and when Herod had taken the Temple, and stormed the parts below it on Ophel, it is said that he forced the Jews "from the Low Town, and burnt it down to Siloam."<sup>f</sup> The quarter bounded by the second wall was originally a distinct hill, called in

<sup>a</sup> Bell. v. 9, 2.

<sup>b</sup> Bell. v. 11, 4.

<sup>c</sup> Bell. v. 9, 2.

<sup>d</sup> Bell. v. 5, 8.

<sup>e</sup> Bell. v. 5, 8.

<sup>f</sup> Bell. vi. 7, 2.

Josephus the Third Hill;<sup>a</sup> but when the Asmonean or Mill Valley between the third hill and Acra, or the second hill on the eastern ridge, was filled up,<sup>b</sup> this third hill became amalgamated with the Low Town on the second hill, and passed as part of it.<sup>c</sup> Thus, the third hill within the second wall was a portion only, and comparatively a small portion, of the Acra or Low Town, and this is confirmed by the summary way in which Josephus disposes of the second wall. It "encircled," he says, "the northern quarter only," language inconsistent with its comprising any considerable area.

Other circumstances also will shew the narrow dimensions of the space within the second wall; for when Titus had taken the outer or third wall of Agrippa, now represented by the line of the present wall, he encamped within the outer wall, and yet was out of reach of shot from the second wall.<sup>d</sup> The course of the second wall must therefore have been much to the south of the third or outer wall, and so of narrow limits, or there would not have been the necessary space between the outer or third wall and the second wall for the encampment. But as many do not admit the identity of the outer wall with the present wall, the last argument, according to their view, has no weight. But the same result may be arrived at by another fact which cannot be gainsaid. The outer wall contained ninety towers, and the first wall sixty towers,<sup>e</sup> and the two together forming the whole circuit of the city made a circumference of thirty-three stades.<sup>f</sup> If, therefore, one hundred and fifty towers were found in a wall of thirty-three stades, the second wall, which had only fourteen towers, would be about one-eleventh part, or three stades. Of the ninety towers however of the first wall, some twenty must have stood in the parts of the first wall within the city, and not in the line of the outer ambit; and if we deduct one-third or twenty towers on this account, there will still remain forty towers in the first wall, which added to the ninety towers of the outer or third wall will make one hundred and thirty towers for the whole circumference of thirty-three stades. The fourteen towers of the second wall would in this view be about one-ninth of the whole, and one-ninth of thirty-three stades would be three stades and two-thirds, or about 2,200 feet; whereas, if we draw a straight line from the Gate Gennath to Fort Antonia at the north-west corner of the Haram, the distance is about 2,000 feet, and the difference is to be accounted for by the turns of the second wall in its progress. The difficulty, if we look to the number of towers, is not how to make the second wall long enough, but how to make it short enough.

<sup>a</sup> Bell. v. 4, 1.<sup>b</sup> Bell. v. 4, 1.<sup>c</sup> Called, for instance, the Low Town, Bell. iv. 9, 12.<sup>d</sup> Bell. v. 7, 3.<sup>e</sup> Bell. v. 4, 3.<sup>f</sup> Ibid.



I will now state what in my opinion was the true course of the middle or second wall. The original Jerusalem was Jebus, the *first* hill of Josephus, the great platform known in our day as Sion. When Jebus was taken by David, and it became his capital instead of Hebron, a new city sprung up in the eastern ridge, being the *second* hill of Josephus, and afterwards known as the Low Town or Acre, and called in Nehemiah the City of David. When his son and successor Solomon erected the Temple at the north end of the eastern ridge, and inclosed the Temple platform for its protection, the parts immediately adjacent to the Temple on the west, and called the *third* hill of Josephus, gradually became covered with buildings, and, as the population in this part extended itself, it became necessary to protect it from the enemy. This was a work of some labour, as the ground sloped upwards toward the west, so that the only safeguard would be to cut off the higher ground on the west by a deep trench, in the same manner as the higher ground to the north of Fort Antonia had been cut off by the deep trench now called Bethesda. Have we then any traces of such a fosse? Halfway along the street from the Jaffa Gate to the Haram is on the north side the triple line of bazaars, and they are seated in a deep hollow running up northward, so that the roofs of the bazaars are on a level with the surface of the ground on each side, both east and west, and this extraordinary excavation is continued as far as the Porta Judiciaria, at the junction of Damascus Street with the Via Dolorosa.<sup>a</sup> The only explanation which can be given of this cutting, which is certainly artificial, is that it once formed the fosse at the foot of the second wall for the protection of the quarter seated on the *third* hill. This is confirmed by the discovery at the north end of the bazaars of large bevelled stones, corresponding in character to those at the south-east and south-west corners of the Haram.<sup>b</sup> At this point stood the gate of Ephraim, and 600 feet more to the north, where the second wall turned eastward to join Fort Antonia, stood the corner gate called in after times the Porta Judiciaria. Accordingly, on the latter spot has been found, at the depth of 18 feet below the surface, the fragment of an ancient and massive wall.<sup>c</sup> The second wall extended no further northward, for between this point and the Damascus Gate excavations have been made, but no traces of it can be discovered.<sup>d</sup> At the Porta Judiciaria therefore, or the corner gate, the second wall made a sharp turn eastward; and in this direction we again come upon traces of it along the Via Dolorosa, at the point called the First Fall of Christ, where have been discovered "large stones and an ancient gate."<sup>e</sup>

<sup>a</sup> Robinson, Bib. Res. iii. 166, 169. Tobler's Dritte Wand. 238.

<sup>b</sup> Lewin's Siege of Jerusalem by Titus, 356.

<sup>c</sup> Pierotti, vol. i p. 33.

<sup>d</sup> Ibid.

<sup>e</sup> Ibid.

It will be remembered that in the time of King Amaziah, Jehoash, King of Israel, possessed himself of Jerusalem, and broke down 400 cubits or 600 feet of the wall from the Gate of Ephraim to the corner gate,<sup>a</sup> and that this part of the wall was afterwards restored by King Hezekiah.<sup>b</sup> This reparation of the broken wall by Hezekiah is coupled with another statement which materially concerns the second wall, as it accounts for an alteration made in the original course of it. Hezekiah, it is said, "built up the wall that was broken, and raised it up to the towers, and *another wall without*,"<sup>c</sup> which makes it probable that this additional "wall without" had some connection with the restored wall; and so it was. Hezekiah was threatened with an invasion by Sennacherib, and one of his leading objects was, in case of a siege, to supply Jerusalem with water. The Upper Pool, called by Josephus the Serpent or Dragon Pool, lay without the walls of the city, at the head of the Valley of Hinnom, and would thus fall into the hands of the enemy. The supply of water to the Citadel, now the Castle of David, and the High Town, was drawn from this pool, and Hezekiah therefore determined to discharge the water into another pool which should be beyond the enemy's reach. For this purpose he excavated the pool a little to the north-east of the Castle of David, called by Josephus the Almond Pool, and now correctly the Pool of Hezekiah. But, as the site of the new pool was just without the walls of the city, Hezekiah, at the same time that he restored the old second wall, "built another wall without," by carrying a wall in an elbow from the north of the High Town round the new pool, until the new wall joined the old second wall at the Gate of Ephraim. This is not merely an ingenious theory, but borne out by actual exploration. Some years since, in excavating for the foundations of the present (not the new) residence of the Latin Patriarch, just west of the Pool of Hezekiah, remains of the solid masonry of an old wall, no doubt the supplemental wall of Hezekiah, were brought to light;<sup>d</sup> and again, in making the repairs of the Coptic Convent at the north of the Pool of Hezekiah, the workmen came upon an old wall running east and west, of the breadth of 10 or 12 feet and constructed of large hewn and bevelled stones.<sup>e</sup> The purposes of a pool would have required a thickness of wall of 3 to 4 feet only, but here was the thickness of 10 or 12, and if the latter, it was just the breadth of the ancient wall of the Temple.<sup>f</sup> Here then we have the direction of the new or supplemental wall, running, so soon as it passed the Pool of Hezekiah, in an eastward direction. The line of the

<sup>a</sup> 2 Kings, xiv. 13; 2 Chron. xxv. 23.

<sup>d</sup> Pierotti, vol. i. p. 25.

<sup>b</sup> 2 Chron. xxxii. 5.

<sup>e</sup> Robinson, Bib. Res. 329.

<sup>c</sup> Ibid.

<sup>f</sup> Bell. vi. 5, 1.



same wall has been traced a little further on at the Lesser Mosque of Omar, at the north-west corner of the quadrangular area of the Hospitallers, and the masonry in this part is described as "composed of large blocks of stone of a tolerably regular form, and fastened together by iron cramps."<sup>a</sup> From this point it still continued its course eastward until it joined the old second wall at the Gate of Ephraim, where the restoration by Hezekiah of the wall broken down by Jehoash began, and where, as already noticed, we again find traces of the old wall in the bevelled stones recently discovered in the excavations for the Prussian Consulate. By carrying the second wall, as we have done, from a point in the inner or first wall opposite the south-west corner of the Pool of Hezekiah, and then along the west and north sides of the pool to the bazaars, and then along the trench to the Porta Judiciaria, and then to the Haram, we satisfy every notice of the second wall to be found in Josephus, and the hypothesis is confirmed by all the remains of the second wall which have yet been found. If it did not run in this line, what was its course? for between this line and the outer or third wall not a vestige of any wall or gate or tower has ever been turned up, notwithstanding all the efforts which have been made. It is almost unnecessary to repeat that, if this line of the wall be conceded, the Holy Sepulchre at the time of the crucifixion was beyond the second wall, *i. e.* was without the city.

But it will be said, Assuming that the site of the Holy Sepulchre was at this time without the city, yet if the spot was inclosed by the outer or third wall by Agrippa ten years after the crucifixion, it must at the time of the crucifixion have been extremely populous, and how then could there have been a garden there, and *a fortiori*, how could there have been a sepulchre there?

We will take the several points in order, and first as to the populousness of that part. It is now generally acknowledged that the numbers put forward by Josephus as crowded into Jerusalem are gross exaggerations. There was no census, and the numbers were guesses. We are not bound therefore to people this quarter for the mere purpose of finding room for the imaginary multitudes raised up by the creative pen of the historian. Let us rather collect, if we can, from the facts to be found incidentally in Josephus himself, what was the truth. When Titus determined on assaulting the outer or third wall opposite the monument of the High Priest John, he did so because at that point there was an interval between the outer or third wall and the middle or second wall, which gave him access to the inner or first wall. And what is the reason which

<sup>a</sup> Pierotti, vol. i. 25.

Josephus assigns for this? "Because," he says, "they (the Jews) had not cared to fortify *a part of the new city which was not much inhabited.*"<sup>a</sup> This will account for a fact which otherwise would be very surprising, viz.: that Josephus, in his general description of the city, omits all mention of this particular tract; for, taking the different quarters in the order in which they were peopled, he describes first the High Town or Jebus on the first hill, and then the Low Town added by David and Solomon on the eastern ridge of the second hill, and then the third hill, which was inclosed by the second wall,<sup>b</sup> and then the fourth hill called Bezetha, at the north of the temple, to protect which the wall of Agrippa was erected;<sup>c</sup> and in this account no allusion is made to the part of the western ridge without or beyond the second wall, though this part was also inclosed by the wall of Agrippa; and the reason of the omission is that the population on this portion of the western ridge was not worth speaking of. It is not a little remarkable that even at the present day this part of the city is still an open area unoccupied by human habitations. There seems to be a spell upon the spot now as in the days of Josephus. The outer or third wall then, as regards the western ridge, was built for strategic purposes only, viz.: as affording a better line of defence by running along the crest of the hill instead of across the lower ground upon the declivity. Under such circumstances, and before the erection of the wall of Agrippa, we need not be surprised that gardens should have existed in this quarter; and the further we go the more satisfied we shall be that gardens did actually exist. The gate which led from the High Town to this part was, as we have said, called Gennath, *i.e.* the Garden Gate, and how could it have acquired that name except as leading down to the gardens. The Pool of Hezekiah was called the Almond Pool, a name probably derived from the almond trees planted about it. But further, when the city was beleaguered by Titus, his first step was to clear the ground on the west side of the city up to the Serpent or Dragon Pool, more anciently called the Upper Pool, and it is especially mentioned that this quarter was intersected by gardens.<sup>d</sup> No doubt the particular gardens here referred to are those without the wall of Agrippa; but when we remember that at the time of the crucifixion no such wall existed, we are warranted in assuming that the gardens extended up to the second wall.

As to the existence of tombs there we are not left to conjecture even, for reference is again and again made in Josephus to the monument or tomb of the

<sup>a</sup> ἀμελησάντων καθ' ἃ μὴ λίαν ἡ καινὴ πόλις συνώκιστο τειχίζειν. Bell. v. 6, 2.

<sup>b</sup> Bell. v. 4, 1.

<sup>c</sup> Bell. v. 4, 2.

<sup>d</sup> Bell. v. 3, 2.



High Priest John, which stood close to the second wall, just opposite to the Gennath Gate.<sup>a</sup> Our Lord's body was laid in the tomb of Joseph of Arimathea, who is described as a "rich man," and the circumstance of a high priest having been buried near to it shows that this was a place of interment for persons of distinction. It is not to be forgotten that to this day, in the immediate vicinity of our Lord's tomb, are two other tombs of a purely Jewish character cut in the native rock, and called the tombs of Joseph and Nicodemus.<sup>b</sup>

It is obvious that the two facts to which we have adverted, viz. the existence of tombs and the want of population in this part shed light upon each other, for it is well known that the Jews had a religious horror of residing where there were sepulchres, so that if there were a cemetery here there would be no inhabitants.

We shall now show on the most undoubted testimony that for upwards of 1,500 years the Holy Sepulchre and Golgotha have been assigned to the very spots where they now appear. The Bordeaux Pilgrim was at Jerusalem in A.D. 333, and in describing his peregrinations in and about the city, he first of all ascends the Temple Platform and then passes down the Tyropœon Valley to Siloam; he next mounts the hill of Sion, and surveys the house of Caiaphas without the wall of Sion; he then passes within the wall of Sion through the southern or Sion Gate, and having examined the objects worthy of notice on Mount Sion within the wall, he proceeds thus: "To go thence out of the wall, as you go from Sion to the Nablous Gate, on the right hand, down in the valley, are the walls, where was the house or Prætorium of Pontius Pilate. There our Lord was tried before He suffered; but on the left is Mount Golgotha, where our Lord was crucified. From thence about a stone's throw is the crypt where His body was laid, and on the third day He rose again. In the same place has recently been erected by command of the Emperor Constantine a Basilica of wonderful beauty, having cisterns on the side, whence water is raised, and a bath at the rear, where infants are washed."<sup>c</sup> As the pilgrim had himself passed through Nablous (which he calls "*Civitas Neapoli*"), there can be no doubt that by the *Porta Neapolitana* he means what to this day is called the Nablous, otherwise the Damascus Gate, and then his walk from Sion along the street leading to the Damascus Gate would be as accurate now as it was then. The valley is on the right hand, and at the bottom of it is the so-called House of Pilate, the Serai or Barrack at the north-west corner of the Temple Platform. On the left is

<sup>a</sup> Bell. v. 6, 2; v. 9, 2; v. 11, 4.

<sup>b</sup> Robinson, *Bib. Res.* 180.

<sup>c</sup> *Inde ut eas foris murum de Sione euntibus ad portam Neapolitanam, &c.*

Golgotha, and at the distance of a stone's throw from it is the Holy Sepulchre, and over and about it is the Basilica, or what is left of the Basilica, erected by Constantine, and at the north side of it is the great cistern called the Treasury of Helena, the largest of all the cisterns in Jerusalem, and on the other side in the Chapel of the Invention of the Cross may still be traced the bath in which the infants were washed.<sup>a</sup>

The testimony of Eusebius is no less explicit, though presented in a different form. He was a contemporary of the Bordeaux Pilgrim, and witnessed the erection of the church, and his description of it shows conclusively that it was built over the tomb now known as the Holy Sepulchre. The entrance to the Sepulchre, he says, was towards the east,<sup>b</sup> and so it is; and over it was erected an oratory,<sup>c</sup> which is now represented by the *ædicula* or little chapel, containing the Sepulchre. There, he says, Constantine formed a rotunda about the Sepulchre, and embellished it on *three* sides with columns,<sup>d</sup> and to this day a circular colonnade encompasses the Sepulchre on the north, south, and west sides, but not on the east. On this, the east side, he continues, Constantine erected the grand Basilica or Church, with a nave and double aisles, of two stories, of which the lower was excavated in the rock, and the upper or gallery only was above ground;<sup>e</sup> all which particulars, including the excavation of the lower story, are to be found in the present church. Still further to the east and facing the market-place was the Propylæum,<sup>f</sup> and recently in Damascus Street, where formerly was the market<sup>g</sup> and now are bazaars, some of the columns and other remains of the Propylæum have been brought to light,<sup>h</sup> insomuch that Comte de Vogüé has been enabled by comparing the several parts to furnish the configuration of the whole edifice.<sup>i</sup> Thus, throughout, there is so exact an agreement of the existing remains with the description of Eusebius, that no one can reasonably doubt that the Church of Constantine was erected upon this spot; in other words, more than 1,500 years ago tradition located the Sepulchre of our Lord where it now is.

In conclusion, I will advert to a question which naturally presents itself, viz. Assuming that the site of the Sepulchre has been satisfactorily ascertained, is it possible that any part of the Sepulchre itself is now extant. Considering the havoc

<sup>a</sup> See Murray's Handbook for Syria, where the chapel is said to have been an ancient cistern.

<sup>b</sup> Euseb. Vit. Const. iii. 36.

<sup>c</sup> Id. iii. 33, 34.

<sup>d</sup> Id. iii. 35.

<sup>e</sup> Id. iii. 37.

<sup>f</sup> Id. iii. 40.

<sup>g</sup> Robinson, Bib. Res. iii. 166.

<sup>h</sup> Robinson, Bib. Res. iii. 168. Tobler's Dritte Wand. 343. <sup>i</sup> See Vogüé, Eglises de la Terre Sainte, 126.



that has more than once swept over Jerusalem, it would be a rash assertion to say that any portion of the actual tomb has survived; but, whether that be so or not, the form of the original sepulchre has been faithfully preserved. The minute manner in which it answers to the few notices of the tomb in the New Testament cannot otherwise be accounted for. Thus, Peter “stooping down and looking in, saw the linen clothes lying,”<sup>a</sup> which shews that the tomb was not sunk deep into the ground, or, on the contrary, cut into the rock at a height, but was excavated laterally with the usual low entrance, such as that now shewn, and which requires a person to stoop down sideways to look into it. Again, when the two Marys came to the Tomb, they “saw a young man sitting on the right side;”<sup>b</sup> and when Mary Magdalene afterwards returned to weep at the Sepulchre, she “saw two angels in white, sitting the one at the head and the other at the foot.”<sup>c</sup> Now the Jews had two forms of sepulture; one was to place the body in a *loculus* or recess cut laterally into the rock, and the other was to lay the body on a ledge or bench of rock; and, from the angels sitting on the tomb, it is evident that in the case of our Lord the second mode of sepulture was adopted, and that this ledge was formed on the right hand of the tomb. This is exactly what now appears in the Holy Sepulchre. You enter through a low door, and then a ledge of rock is shewn on which the body reposed, and on which two persons could very well be seated, and this ledge, observe, is on the right hand. Another feature was preserved for many centuries, but has now disappeared. A stone lay in the outer chamber, and was said to be the stone that closed the mouth of the Sepulchre, and it was *molaris*,<sup>d</sup> or like a millstone. Amongst the Jews at that particular period a custom prevailed of closing the door of the sepulchre by means of a circular stone like a millstone, which, being set upright, could be rolled backwards and forwards in a groove at one side of the doorway; that is, when the sepulchre was to be closed the stone was rolled forward, and when the sepulchre was to be opened it was rolled back. But no little strength was required for putting so heavy a mass into motion; and how singularly this answers to the casual notices in the New Testament. “They rolled a great stone to the mouth of the sepulchre;”<sup>e</sup> and again, “Who will roll us away the stone from the mouth of the sepulchre?”<sup>f</sup> and again, the angel “rolled back the stone from the door and sat upon it.”<sup>g</sup> This, as the stone was not lying flat, but, when rolled aside,

<sup>a</sup> John, xx. 2.

<sup>b</sup> Mark, xvi. 5.

<sup>c</sup> John, xx. 7.

<sup>d</sup> Anton. Placent.

<sup>e</sup> Matthew, xxvii. 60. Mark, xv. 46.

<sup>f</sup> Mark, xvi. 3. Luke, xxiv. 2.

<sup>g</sup> Mark, xxviii. 2.

still stood upright, is intelligible enough. A curious instance of this machinery for closing the door of the sepulchre exists to this day in the so-called Tombs of the Kings, but which is really the mausoleum of Queen Helena, and of the royal family of Adiabene, constructed not long after the Crucifixion, as is evident from the debased style of architecture employed in it.<sup>a</sup> Until the mechanism in this mausoleum was scrutinised and explained, the full meaning of the passages just cited from the New Testament was not fully understood, and the true interpretation was, if I mistake not, first distinctly pointed out by myself.<sup>b</sup>

<sup>a</sup> See further upon this subject Lewin's *Siege of Jerusalem by Titus*, 394.

<sup>b</sup> *Lewin's Siege of Jerusalem by Titus*, 394.

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VIII.—*The Mosque of Omar.* By THOMAS LEWIN, Esq., M.A., F.S.A.

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Read March 8th, 1866.

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A CLOUD of mystery has long shrouded the Mosque of Omar, and various hypotheses have been put forward for solving the enigma. I am about to propound a novel theory; and, as most persons must long since have formed their own conclusions, I feel that prejudices are to be overcome, and that without any partisans, at least to begin with, on my side, I must necessarily have many opponents. The Society however will, I am sure, indulge me with a patient hearing, while I explain my views. Let me in the first place, for the benefit of the uninitiated, state the question at issue.

Experienced architects have pronounced, *ex cathedrâ*, that the Mosque of Omar, on examining its details, could not have been erected by the Mohamedans, but is a Roman edifice, which must have been built some time between the reign of Diocletian, who began A.D. 284, and the reign of Justinian, who began A.D. 527, but nearer the former terminus than the latter; and, not finding any other explanation ready at hand, they have broached the idea that the Mosque of Omar is the church erected by Constantine over the Holy Sepulchre, which they identify with the cave under the rock, immediately under the dome of the mosque known as the Sakhrâh. To this view there are, to the best of my judgment, overwhelming objections, and which I have stated categorically elsewhere,<sup>a</sup> and which I shall not here repeat. I propose at present to make only one or two remarks which may be appropriately introduced as more immediately connected with the edifice itself. If the Mosque of Omar, as it now stands, was the work of Constantine, how, I may ask, is this to be reconciled with the historical facts that the Church of Constantine was burnt by the Persians in A.D. 613,<sup>b</sup> and that when rebuilt it was

<sup>a</sup> Lewin's Siege of Jerusalem by Titus.

<sup>b</sup> Robinson, Bib. Res. i. 387.

razed to the foundations in A.D. 1009 by the third Fatimite Caliph Hakem?<sup>a</sup> Some parts of the ceiling even of the mosque are supposed by architects to be the original work, and yet the voice of history has emphatically pronounced that the Church of Constantine was twice utterly destroyed! The advocates of the Constantine theory admit this, as they may well do, to be a "rather startling fact."<sup>b</sup> Again, if the cave under the Sakhrâh was the Holy Sepulchre, and the dome was erected over it in its honour, how comes it that the cave is not in the centre of the dome, but at the south-east corner?—this simple circumstance, trifling as it is, shows that the cave was not the point of attraction, but was a mere accident. Again, if the rock was so sacred as to have led to the erection of the dome over it, how is it that we find a well sunk through the top of the rock into the cave below, and then through the floor of the cave down to the aqueduct which distributes, or rather did distribute, water over the Haram?<sup>c</sup> Of course this well could not have been made since the erection of the mosque; and, if the cave below was the Holy Sepulchre, how could it have been made during the period between the Crucifixion and the erection of the building, as, according to history, the site of the Sepulchre during that period was occupied by a temple to Venus, in mockery of the Christians?<sup>d</sup>

But, admitting the mosque to have been built during the period between Diocletian and Justinian, is there no alternative but to identify it with the Church of Constantine? Does history furnish no circumstances under which the mosque could be attributed, with at least some degree of probability, to any other founder than Constantine? There is to my apprehension a simple solution of the difficulty which will account for all the phenomena, and it is the object of the present paper to submit a proposition which, if it cannot be demonstratively proved, will yet recommend itself, if the arguments be carefully weighed, as in the highest degree probable. My hypothesis is, that the Mosque of Omar is the Temple to Jupiter Capitolinus, originated by the Emperor Hadrian, and restored or rebuilt by Maximinus Daza, who, on the abdication of Diocletian in A.D. 303, became the sovereign of Syria and Egypt, and remained so until A.D. 313.

Upon the capture of Jerusalem by Titus in A.D. 70, Fort Antonia at the north-west corner of the Haram and the Temple at the south-west corner of it were utterly destroyed, and from that time, for upwards of sixty years, the Haram

<sup>a</sup> *Prædicta ecclesia usque ad solum diruta.* William of Tyre, lib. i. c. 4, 5. See Robinson, *Bib. Res.* i. 395.

<sup>b</sup> Fergusson's *Jerusalem*, p. 107.

<sup>c</sup> Pierotti.

<sup>d</sup> Euseb. *Vit. Const.* and Sulpicius Sev. lib. ii.



(a walled inclosure 1,500 feet from north to south by 900 from east to west) lay desolate. In A.D. 131 the Emperor Hadrian, on his way through Syria to Egypt, conceived the design of rebuilding the city, not as a Jewish but as a Greek settlement,<sup>a</sup> by the name of *Ælia Capitolina*, after his own name of *Ælius*. He at the same time, from the resemblance of the Haram or Temple Platform to the Capitol at Rome, commanded the erection of a temple to Jupiter Capitolinus on the Haram. Hadrian himself passed from Syria to Egypt, but left orders for the restoration of the city and the construction of the temple.<sup>b</sup> The spirit of the Jews was roused at the threatened appropriation of the site of their metropolis to strangers, and the desecration of their holy places by an idolatrous temple; and, in the following year A.D. 132, they broke out into open rebellion under the leadership of their prophet the famous Barchocab, the Son of the Star.

For two or three years Barchocab was in possession of the ancient capital, and struck money there in honour of recovered independence, and of course swept away all heathenish defilements with the besom of destruction. The Jews seem during that short period to have even rebuilt a semblance of their own temple. But it was impossible for a feeble and dispersed race to resist for any length of time the crushing weight of the whole Roman empire, and in A.D. 135 the war was brought to an end, and the Romans, once more triumphant, were masters of Jerusalem; and thenceforth, until the time of Constantine, made it death for any Jew even to approach his native soil. It is mentioned by the *Chronicon Paschale* that Hadrian now destroyed "the Temple of the Jews;"<sup>c</sup> and Fynes Clinton remarks that "there was no temple at this time at Jerusalem," and that the *Chronicon* must be mistaken; but, as it is called emphatically "the Temple of the Jews," it may very well mean the temple erected by Barchocab as opposed to that contemplated by the Romans in honour of Jupiter Capitolinus.

When the last sparks of rebellion had been stamped out, Hadrian resumed the design of restoring the city by the name of *Ælia* and erecting the temple to Jupiter; but, as he lived only until A.D. 138, many of his works were probably left imperfect. As to the temple of Jupiter Capitolinus, the testimony of Dion Cassius, who wrote at the beginning of the third century, is as follows:—"And Hadrian, having planted at Jerusalem a city, which he called *Ælia Capitolina*, instead of the one which had been razed, and having erected in the place of the Temple of the God (ἐς τὸν τοῦ ναοῦ τοῦ θεοῦ τόπον) another temple to Jupiter, a war

<sup>a</sup> Malala, lib. lxi. Dion. lxi. 12.

<sup>b</sup> Epiphan. de Pond. et Mens. s. 14.

<sup>c</sup> τὸν ναὸν τῶν Ἰουδαίων.

broke out neither unimportant nor shortlived.”<sup>a</sup> There can be no doubt that a temple to Jupiter Capitolinus was now erected by Hadrian, but a question may well be raised as to the exact site and as to the character of the temple. The tradition in the time of Dion may have been that the temple of Jupiter was built on the very site of the Jewish temple. But we must allow somewhat for rhetorical effect, and various considerations induce us to think that the tradition in this respect was erroneous. Thus an equestrian statue to Hadrian stood on the platform of the Haram, and, according to Jerome, on the very spot where had once been the Holy of Holies;<sup>b</sup> but this statue (if, as is generally admitted, it was one of the two statues of Hadrian referred to by the Bordeaux Pilgrim,) was certainly without the temple of Jupiter Capitolinus, for the wailing-place of the Jews is described as “not far from the statues (*non longe de statu is lapis pertusus, &c.*);” whereas, had the statues been within the temple, the wailing-place must necessarily have been described as not far from the temple. If the statues therefore were without the temple of Jupiter, and yet within the Jewish temple, the Heathen temple could not have occupied the site of the Jewish temple. It may be remarked by the way that Jerome and the Bordeaux Pilgrim confirm each other; for if, as Jerome says, the statue was on the Holy of Holies, it follows that, as the Bordeaux Pilgrim states, it was near to the wailing-place; for the wailing-place at the foot of the Haram wall was the nearest accessible point to the Holy of Holies on the platform above.<sup>c</sup> Another proof that the temple of Jupiter was not on the very site of the Jewish temple is this, viz.: Justinian afterwards built his church (now the Mosque el Aksa) at the south-west corner of the Haram; but here had stood the temple of Jehovah, and yet in the reign of Justinian that site must have been still unoccupied by any other edifice.

The temple of Jupiter, erected by Hadrian, was not then on the site of the Jewish temple. But further, Was Hadrian’s temple anything more than an open inclosed space, with the image of Jupiter on a raised platform in the centre?

Within the outer walls of the Haram is at the present day a terrace 550 feet from

<sup>a</sup> Dion. lxi. 12.

<sup>b</sup> De Hadriani equestri statua, quæ in ipso Sancto Sanctorum loco usque in præsentem diem stetit. (Hieron. Comm. in Matt. xxi. 15.) Ubi quondam erat templum et religio Dei, ibi Hadriani statua, et Jovis idolum collocatum est. (Hieron. Comm. in Esaiam, ii. 8.) The latter passage is expressed in general terms only, as is evident from the statue of Hadrian and the image of Jupiter being coupled together, which were not both in the same place.

<sup>c</sup> See Lewin, *Siege of Jerusalem by Titus*, pp. 135, 492.

north to south, and 450 feet from east to west, and averaging about 10 feet high, and in the centre of this is a rocky plateau 60 feet from east to west, and 50 or 55 feet from north to south, and rising about 5 feet above the general area ;<sup>a</sup> and we learn from Vitruvius that the image of Jupiter was always placed on the highest spot,<sup>b</sup> and therefore if it stood on the Haram at all, it must have stood on the plateau of rock now called the Sakhrāh. What, then, was the character of Hadrian's temple ; may it not have been the sacred inclosure of the raised platform 550 by 450 feet, and may not the image have been erected on the smaller plateau in the centre of the platform ? The reasons for doubting whether, notwithstanding the passage from Dion, Hadrian ever built a temple in the sense of a walled and roofed edifice, are these : Epiphanius in speaking of the restoration of Jerusalem under the name of *Ælia*, tells us emphatically that Hadrian was "minded to restore the city, but not the temple."<sup>c</sup> No one could suppose that in planting a Grecian colony he would rebuild the Jewish temple, and it seems, therefore, to be implied that no edifice at all was substituted for that destroyed by Titus. Again, Eusebius, the historian and antiquary, records the fact that Hadrian banished the Jews from Judea, and planted the heathen city of *Ælia* on the site of Jerusalem, but makes no allusion to a temple to Jupiter, which he could scarcely have omitted had a temple of any great pretension risen under Hadrian's auspices. So Malala or John of Antioch, who is very careful to notice the architectural tastes of the Roman Emperors whose times he is describing, enumerates various monuments left by Hadrian, as a bath and aqueduct at Antioch, a theatre at Daphne, a temple at the same place, an image in the Shrine of the Nymphs there, and a temple at Cyzicus, &c., and then refers to Hadrian's planting of the Grecian city of *Ælia*, but not a word about the Temple of Jupiter, though had he erected so magnificent a one as the present mosque, Malala could scarcely have passed it over in silence. But the principal authority is a passage found in the *Chronicon Paschale*, which counts up the works of Hadrian at Jerusalem ; and the Temple of Jupiter, as an edifice at least, is not amongst them. I think, however, it makes its appearance as an open sacred inclosure.

Some of the monuments referred to by the *Chronicon Paschale* have very much puzzled commentators, but by the light of modern exploration we can establish the identity of most of them. The words of the chronologer are as follows : "And (Hadrian) having razed the Temple of the Jews, erected in Jerusalem the

<sup>a</sup> Lewin, *Siege of Jerusalem by Titus*, p. 462.

<sup>b</sup> Lib. i. c. 7.

<sup>c</sup> διανοεῖται οὖν ὁ Ἀδριανὸς τὴν πόλιν κτίσαι, οὐ μὴν τὸ Ἱερόν Epiphan. de Pond. et Mens. s. 14.



two Publics (δημόσια), and the Theatre and the Tricamarum (τρικάμαρον), and the Tetranympum (τετράνυμφον), and the Twelve-Gates before called the Steps (τὸ δωδεκάπυλον τὸ πρὶν ὀνομαζόμενον Ἀναβαθμοὶ), and the Quadra (τὴν Κόδραν).<sup>a</sup> The two Publics are of course public baths, and it reflects honour upon the ancients and discredit upon ourselves that a public with them meant a bath, and with us a pothouse. The site of the theatre is unknown. The Tricamarum has been hitherto a mystery, but we can now solve it. Καμάρα in Greek is an arch, and Τρικάμαρον, therefore, signifies the triple arch, and such is the arch of the Ecce Homo. Until recently the central arch only was known, but from the excavations made for the new building of the French Convent on the north side of the arch, it has been ascertained that the central arch was supported by a side arch on the north, and then, when attention was called to the subject, it was remembered that a few years before a corresponding arch on the south had been removed to make way for the erection of a small mosque.<sup>b</sup> Thus at length the meaning of the Τρικάμαρον has been detected, and the arch of the Ecce Homo is ascertained to belong, as Dr. Robinson had conjectured from the style of it, to the Emperor Hadrian. The Tetranympum may have been a temple to the Four Nymphs, as we have seen that Hadrian honoured the Temple of the Nymphs at Daphne; or the Tetranympum may have been a temple whose vestibule or portico was supported by four caryatides. We come next to the Twelve-Gates, formerly called the Steps. The Ἀναβαθμοὶ or Steps are referred to in the Acts of the Apostles, for when Paul was hurried by Lysias across the Temple area and came to the "Stairs" on his way to Fort Antonia, he was carried up by the soldiers from the press of the multitude.<sup>c</sup> The Temple occupied a square of 600 feet at the south-west corner of the Haram, and the Stairs, therefore, were at the northern side of the Temple; and at the distance of exactly 600 feet from the southern wall of the Haram are at the present day the "Stairs" or Steps for ascending the platform on which stands the mosque.

It is clear from the number of gates that the Dodecapylum, or Twelve-Gates, was not an edifice, and on entering the Haram you see at once the explanation. This elevated terrace, 550 by 450 feet, is approached on all sides by steps. Originally they were no doubt simply steps, but Hadrian improved them by adding portals overhead, and most of these portals, or their representatives, remain to the present day. Each side had anciently three gateways, making together the

<sup>a</sup> Chron. Pasch. A.D. 119.

<sup>b</sup> Lewin, Siege of Jerusalem by Titus, p. 202.

<sup>c</sup> ὁ Παῦλος ἐστὼς ἐπὶ τῶν Ἀναβαθμῶν. Acts xxi. 40.

Twelve Gates, whence the name of Dodecapylum; and at the present day there are three portals on the west side, but some of the portals on the other sides have disappeared, as the whole number is now reduced to eight.<sup>a</sup> Until I met with this passage as to the Δωδεκάπυλον in the Chronicon Paschale, it was always a puzzle to me how this terrace or stage in the middle of the Haram was to be accounted for, as it is evidently artificial. There is nothing in Josephus that leads you to expect it; but, when we learn that the Twelve Gates or central terrace with portals at the landing-places was constructed by Hadrian, we at once hail the fact as a full and satisfactory explanation.

In connection with the Dodecapylum, the Chronicon speaks of the Quadra (Κόδραν), and some writers, unable to follow the meaning, have interpreted it the Mint, and take apparently κόδραν in the sense of κοδράντην, a farthing,—as if a mint could ever have been called after a piece of money, and that so insignificant a piece as a farthing! But κόδραν in Greek is senseless, and the word can only be the Latin *quadra*, a square; and, as it is mentioned in the same breath with the Dodecapylum, we may reasonably suppose it to have some connection with the Dodecapylum. Now the Sakhrah, or central rock on the elevated terrace, has been “hewn vertical” on the north and west sides, in which direction the rock rises, as if to support some facing of stone;<sup>b</sup> and Edrisi, who wrote during the occupation of the Franks (A.D. 1154), describes “this stone as of a quadrangular form, like a shield, and as nearly cubical, the breadth being about equal to the length.”<sup>c</sup> Hence the inference that in the time of Hadrian the rock was cut into a square, or nearly so, and was called the Quadra, and that it supported the image erected on its summit to Jupiter.

I now pass on to the time of Diocletian, whose reign began A.D. 284. During the interval Christianity had been making steady progress, and heathenism had gradually waned. Local and temporary persecutions of the Christians had occurred, but maxims of policy had prevented the Emperors from commencing an internecine war in this world against those who fought from the 'vantage ground of the next. But in the latter days of Diocletian and Maximian, viz. in A.D. 303, a last and expiring effort was made against the new religion. Churches were razed to the ground; the Holy Scriptures were burnt by the common executioner; Christians who held any public office were degraded; and freedmen who maintained the Christian faith were again sold into slavery; and, what was a constant source of bitterness, Christians, however illtreated personally or

<sup>a</sup> Tobler's Top. Jer. 508.

<sup>b</sup> Barclay, 499.

<sup>c</sup> Pierotti, vol. i. p. 289.

defrauded as to their property, were prohibited from obtaining redress in the courts of justice. But further, all were ordered to do sacrifice to idols, and if they refused were committed to prison, and the more hardened offenders were burnt at the stake or led to the block<sup>a</sup>. This state of things continued for two years, and then, to the world's amazement, Diocletian and Maximian, in A.D. 305, abdicated the throne, and Constantine and Galerius succeeded as the two Augusti, with Severus and Maximin, called Daza, as the two Cæsars. The persecution now abated in other parts of the empire; but in Syria and Egypt, which were allotted to the tyrant Maximin, the persecution was urged forward with increasing intensity.

Maximin Daza rose, or rather (as he had not the buoyancy of merit) was lifted by circumstances, from the meanest to the highest station. In his youth he had been a keeper of sheep, and was uneducated and grossly illiterate. As might naturally be expected, he was narrow-minded, and devoted to magicians and astrologers. He was so gloomily superstitious that he could not (it was said) move even his little finger without recourse to the oracles for advice.<sup>b</sup> Invested with the supreme power over Syria and Egypt, he displayed his bigotry in the strongest colours. He entered heart and soul into the persecution which had been commenced two years before against the Christians, and during the eight years that he held the sovereignty he perseveringly exerted himself for the extinguishment of Christianity and the re-establishment of paganism. Gibbon justly remarks that he was "the last and the most implacable enemy of the Church." The means that he adopted for the attaining his purpose were these:—In every city priests were appointed for conducting the worship of the idols, and to each province was assigned a chief pontiff, to whom the priests of the different cities were subordinate; and the men selected for this superior and responsible office were those who had particularly distinguished themselves for their political ability, and also for their blind devotion to the cause of the old religion.<sup>c</sup> The Christian churches that still remained were levelled to the ground, and in every city was kept a register in which the names of the inhabitants were enrolled; and they were cited man by man,<sup>d</sup> and compelled to offer sacrifice to the idol of the place. Recusants were fined and imprisoned, or condemned to the public works,<sup>e</sup> and in flagrant cases were committed to the flames, or subjected to excruciating tortures,

<sup>a</sup> Euseb. Hist. lib. viii. c. 2.

<sup>b</sup> Euseb. lib. viii. c. 14.

<sup>c</sup> Euseb. lib. viii. c. 14; lib. ix. c. 4.

<sup>d</sup> Euseb. lib. viii. c. 4.

<sup>e</sup> Euseb. lib. viii. c. 13.



or decapitated. Thirty-nine were beheaded by the orders of Maximin in a single day.<sup>a</sup> Amongst the martyrs who suffered in the course of this persecution was Valens, a deacon of Ælia, or Jerusalem,<sup>b</sup>—so that the same dreadful scenes that prevailed elsewhere were also enacted in the Holy City. It is evident that so systematic and continuous a persecution must have produced corresponding effects; and, from the way in which Eusebius glosses over the apostacies and puts forward the martyrdoms, we may be sure that Christianity during the storm shrunk into the background, and paganism again raised its head.

Such is a general picture of the times under the sway of the tyrant Maximin Daza, and we can have no difficulty in applying the picture to the case of Ælia, or Jerusalem, in particular. Every Christian church must have been demolished, and the Temple of Jupiter Capitolinus must, in so important a city, have become a stately edifice,—the more so as Jupiter was not only the tutelary god of the city, but also of the Emperor himself. Both on coins<sup>c</sup> and in edicts<sup>d</sup> appears the name of Maximinus *Jovius*. I admit at once that no passage can be produced from any ancient author which records, *totidem verbis*, that Maximin either restored or rebuilt the Temple of Jupiter at Jerusalem, but the circumstantial evidence is as strong as if it were direct, if not even more so.

I find in Eusebius, who lived under the whole reign of Maximin and witnessed his persecution from beginning to end, and was Bishop of Cæsarea, the Roman capital of Judca, the following statement. “He (Maximin) ordered *temples* to be erected in every city, and the sacred *inclosures* that from length of time had fallen into decay he caused to be repaired.”<sup>e</sup> If, as is not improbable, Hadrian had planned the sacred inclosure or *τέμενος* without building the temple itself or *ναός*, this record of the historian that Maximin built the temples while he only restored the inclosures, would be singularly applicable to Jerusalem, but of course it makes no difference to our argument whether Maximin built or rebuilt the fabric. In another part of the same Eusebius, we meet with the following words: “Immediately therefore the edicts of Maximin were issued against us every where throughout the province (of Judea); and governors, and the commander-in-chief, by proclamations and letters and public ordinances, urged the magistrates and generals and notaries in every city to carry out the imperial mandate which

<sup>a</sup> Euseb. lib. viii. c. 13.

<sup>b</sup> Euseb. lib. viii. c. 11.

<sup>c</sup> Eckhel, vol. viii. p. 52.

<sup>d</sup> Euseb. lib. ix. c. 9.

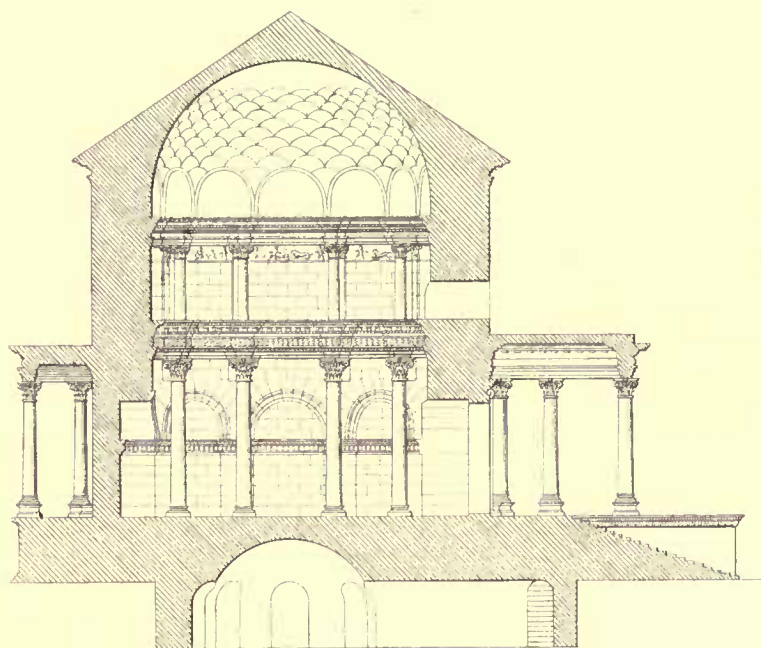
<sup>e</sup> Νεὺς κατὰ πᾶσαν πόλιν ἐγείρειν καὶ τὰ χρόνου μήκει καθηρημένα τεμένη διὰ σπουδῆς ἀνανεοῦσθαι προστάτων. Euseb. lib. viii. c. 14.

ordained that, with all haste, the decayed temples of the idols should be rebuilt.”<sup>a</sup> And again, “In every city priests were appointed for the images, and high priests over them by Maximin himself.”<sup>b</sup> The argument therefore is simply this: it is stated repeatedly in general terms that Maximin either built or rebuilt the temples of the idols in every city in the province of Judea; and, if so, in Ælia or Jerusalem. But competent architects pronounce deliberately that the Mosque of Omar must have been built some time during the period from the commencement of the reign of Diocletian to that of Justinian, and nearer the former than the latter, that is, at the very time when Maximin Daza was sovereign of Judea and Egypt; and must we not therefore necessarily conclude that the edifice in question was one of the temples erected by Maximin?

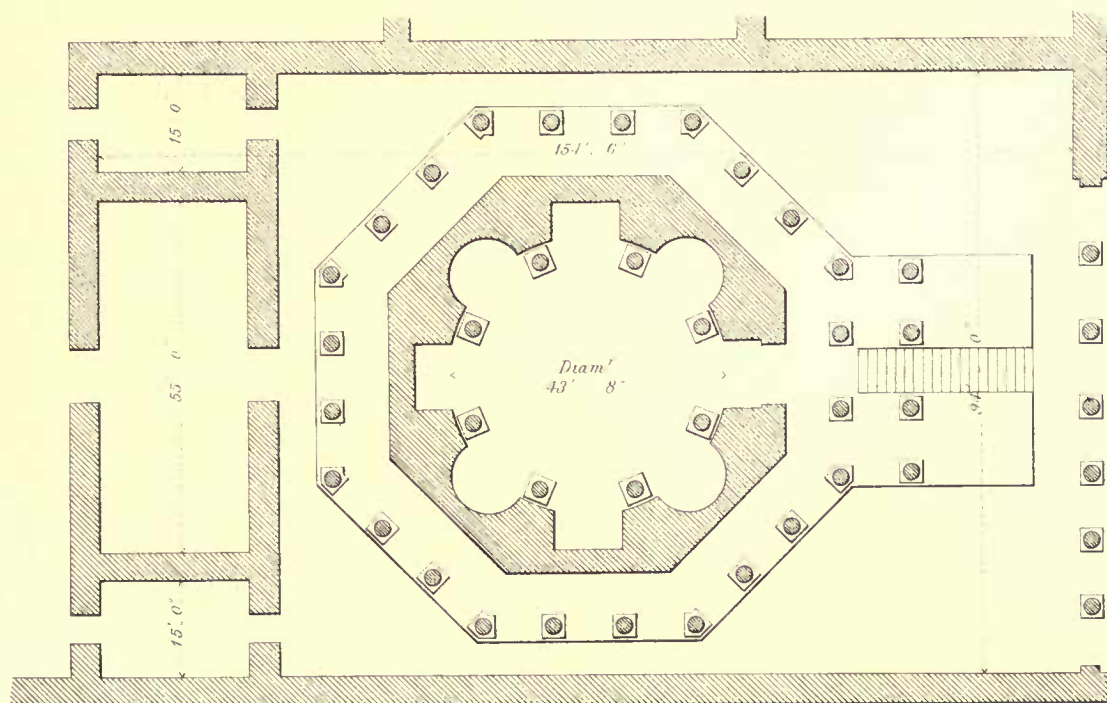
I possess no architectural knowledge myself and cannot judge of details of style; but, as an ordinary observer, and by the light of common sense, I think that, without descending into *minutiæ*, I can point out at least some peculiar features in the mosque which will serve to identify it as one of the temples of Maximin. I have already alluded to the name of Jovius as a title in which Maximin gloried. This title he derived from Diocletian, the founder of the fortunes of the reigning imperial family, including Maximin. As Jupiter therefore was the tutelary god of both Diocletian and Maximin, if perchance we could stumble upon a temple erected to Jupiter by Diocletian Jovius, we should expect to trace some resemblance between it and the building on the Haram, erected, as we suppose, by Maximin Jovius. It fortunately happens that a temple to Jupiter by Diocletian Jovius has been preserved to our own age in the Palace at Spalatro, the scene of the Emperor Diocletian’s retirement after his abdication in A.D. 305. On examining the remains published at the close of the last century by Mr. Adam, a *quondam* Fellow of this Society, we shall be struck by the great similarity both in the general outline and in subordinate particulars. The ancients, as is well known, usually constructed their temples in the rectangular form, but occasionally they adopted the circular form. The Temple of Jupiter at Spalatro (Plate II.) is not rectangular but circular, or rather, to speak correctly,

<sup>a</sup> Ἀθρόως δ’ οὖν αὖθις Μαξιμίνου διαφοιτᾷ καθ’ ἡμῶν πανταχοῦ γράμματα κατ’ ἐπαρχίαν ἡγεμόνες τε καὶ προσέτι ὁ τῶν στρατοπέδων ἄρχειν ἐπιτεταγμένος, προγράμμασι καὶ ἐπιστολαῖς καὶ δημοσίοις διατάγμασι, τοὺς ἐν ἀπάσαις πόλεσι λογιστὰς ἅμα στρατηγοῖς καὶ ταβουλαρίοις ἐπέσπερχον, τὸ βασιλικὸν εἰς πέρας ἄγειν πρόσταγμα, κελεῦον ὡς ἂν μετὰ σπουδῆς πάσης τῶν μὲν εἰδώλων ἀνοικοδομοῖεν τὰ πεπτωκότα, &c. Euseb. De Mart. Pal. c. 9.

<sup>b</sup> Ἱερεῖς δὴτα κατὰ πόλιν τῶν ζοάνων καὶ ἐπὶ τούτοις ἀρχιερεῖς πρὸς αὐτοῦ Μαξιμίνου. Euseb. Hist. Eccl. lib. ix. c. 4.



SECTION.



GROUND PLAN.





octagonal,<sup>a</sup> and the Temple on the Haram is also octagonal. Is this the result of accident or of imitation?

Again, the Temple of Jupiter at Spalatro is in the Corinthian style, and the Temple on the Haram is also Corinthian. Is this also a mere fortuitous coincidence? Again, the Temple of Jupiter at Spalatro has a vaulted chamber under it, and the Temple on the Haram has also a vaulted chamber under the dome, viz. the cave under the Sakhrāh, which has given rise to so much controversy. Indeed, the resemblance between the two vaults is greater than would at first appear, for while the vault under the temple at Spalatro is arched, that under the temple on the Haram has at present perpendicular sides, but this has been satisfactorily accounted for by the discovery that the vault was originally arched, and that the perpendicular sides have been produced by slight walls of comparatively recent date, for the purpose of giving it, as was thought, a more symmetrical shape.<sup>b</sup>

Another circumstance of resemblance is of a more general character, and has reference to the surrounding inclosure. The temple at Spalatro stands in a walled parallelogram with corner towers, and the principal approach to it is by a gate<sup>c</sup> called the Golden Gate; and the temple at Jerusalem stands also in a walled parallelogram with corner towers, known as the Haram, and the principal approach to it was (for it is now closed) the gate on the east, called the Golden Gate; and what is remarkable, the two gates agree not only in name but also in their architecture, and have both been referred by competent judges to the period between Diocletian and Justinian, that is to the age of Maximin.

I have now to speak of a distinction between the two temples, and which will serve to explain what has hitherto been a perplexity, viz. why the rock Sakhrāh is found underneath the dome. The circular temples of the ancients are divided by Vitruvius into two classes; one of them was the peripteros or extra-colonnaded temple, and the other the monopteros or intra-colonnaded temple. The peripteros had a colonnade running round it on the exterior, and within the colonnade was the walled cella or sanctuary which contained the idol or image of the god. The monopteros had the wall on the outside, and the columns were within, and there was no cella or sanctuary as distinct from the rest of the temple. It was necessary, however, to provide a suitable repository for the sacred image, and this was effected by erecting under the dome and within the circular colonnade which ran round the interior a raised plateau ascended by steps, and in the centre of which was exalted the image. "Temples," says

<sup>a</sup> Adam's Palace of Diocletian at Spalatro, from which the ground plan and section in Plate II. are taken.

<sup>b</sup> Pierotti, vol. i. p. 87.

Vitruvius, "are also made in the circular form, of which some, having columns but no cella or sanctuary, are called *monopterae*, others are called *peripterae*."<sup>a</sup> The Temple of Jupiter at Spalatro represents the peripteros style, as the colonnade is round the exterior, and the cella or sanctum is in the centre. The Temple of Jupiter on the Haram represents the monopteros style, as the wall is on the outside, and the colonnade runs round the interior.

"Those temples," continues Vitruvius, "which are made without the cella (that is the *monopterae*) have a tribune and steps a third part of their own diameter,"<sup>b</sup> that is to say, the breadth of the tribune, including the steps, should be one-third of the whole diameter of the temple; and in Mr. Arundale's section of the mosque prefixed to Mr. Fergusson's *Topography of Jerusalem*, the breadth of the Sakhras or plateau of rock is 62 feet, and the breadth of the whole building is 186 feet, so that the Sakhras is just one-third of the diameter of the mosque. These proportions so singularly coincide with the directions of Vitruvius that we must be upon the right track. Vitruvius, in the following book, speaks of the corresponding tribune in the Temple of Augustus, and states it to be semi-circular;<sup>c</sup> and it is not unlikely, to judge from the form of the Sakhras, that while it was square on three sides, on the other, viz. the east, it was semi-circular. "The columns" (in the monopteros temple) continues Vitruvius, "must be mounted on pedestals;"<sup>d</sup> and such are the columns in the Mosque of Omar; and the reason is obvious, viz. it was necessary to give the columns their full height in the monopteros temple, in order to counteract the depressing effect of the elevated tribune. In the peripteros temple, on the other hand, the direction is "Let there be two steps up to the terrace whereon stand the columns, and let the steps be from the foot of the pedestal,"<sup>e</sup> that is, where the colonnade was on the exterior, and there was a cella but no plateau, so that there was nothing to depress the columns, the pedestals of the columns were not to stand on the terrace, but the foot of the pedestals and the lower step were to be on the same level, and the two steps were to rise between the pedestals. Another distinction arising from the different characters of the two temples was this: in the peripteros temple, as in that at Spalatro, where the colonnade was on the outside, the approach to the vault was also from the exterior; but in the monopteros temple, as in that at Jerusalem, where the colonnade was within, the entrance to the vault was also in the interior.

<sup>a</sup> Vitruvius, lib. iv. c. 7.

<sup>b</sup> Vitruvius, lib. iv. c. 7.

<sup>c</sup> Vitruvius, lib. v. c. 2.

<sup>d</sup> *Insuper stylobatas columnæ constituentur.* Vitruvius, lib. iv. c. 7.

<sup>e</sup> *Sin autem Peripteros ea ædes constituetur, duo gradus et stylobata ab imo constituentur.* Ibid.



Let us follow Vitruvius a little further. The Image of Jupiter, he says, should be as high as possible,<sup>a</sup> and the image should face toward the west, and the altar toward the east.<sup>b</sup> In the Temple of Jupiter on the Haram, therefore, the image was erected with the face toward the west, and the altar on which the offerings were made was also on the west, that the worshippers might have the image of the god in front of them; and it is observed by Dr. Barclay that the Sakhrah on the west "has been nicely squared off and lowered," which he supposes to have been "done by the Crusaders when they covered the Sakhrah with white marble, and erected an *altar* upon it."<sup>c</sup> But what he here refers to as the work of the Crusaders is much more likely a remnant of the ornamented tribune in Pagan times, when it supported the Image of Jupiter. Barclay adds, that "there are various recesses cut in the rock both above and below,"<sup>d</sup> and these are no doubt the scars left by the various decorations with which the sacred tribune was anciently decorated. It is quite a mistake to suppose that the rock is undefaced and fresh from the hand of Nature. I have referred to the altar of offerings as within the temple, and I purposely so designated it to distinguish it from the altar for sacrifices, for the latter stood without the temple; and in Edrisi, the Frank writer (A. D. 1154), I find this: "The building contains four doors, and opposite the western is seen the altar on which the children of Israel offered their sacrifices."<sup>e</sup> If Edrisi had said the altar on which the Pagans offered their sacrifices to Jupiter, he would have hit the mark.

Vitruvius, from the brevity of his description, omits to mention the vaults under the temples; but we have seen that the peripteros Temple of Jupiter at Spalatro has a vault under it, and the monopteros temple at Jerusalem has likewise a vault. Indeed, not only the circular temples but the square temples also had vaults,—at least in the rectangular Temple of Æsculapius in the Palace of Diocletian, built at the same time with that to Jupiter, there is a crypt beneath. A moment's reflection will tell us that it could not well be otherwise. From the constant influx and efflux of worshippers, the temples would require to be constantly cleansed, and even the sacred tribune and the image itself would call for occasional purgation. Where then should all the paraphernalia of purification be deposited, so as not to offend the eye? There must have been a lumber-room somewhere, and where could it be but in the vault under the temple? When we examine the vault under the Sakhrah, how admirably it is constructed for

<sup>a</sup> Lib. iv. c. 8.

<sup>c</sup> City of the Great King, p. 498.

<sup>e</sup> Pierotti, vol. i. p. 289.

<sup>b</sup> Lib. iv. c. 5.

<sup>d</sup> Ibid.

these necessary uses! In the centre of it is a well for drawing up water from one of the aqueducts that run across the temple area; and not only so, but in the tribune above a circular orifice has been cut down to the vault, and corresponding to the well below, so that water could be readily drawn up, even to the tribune above, for the purposes of ablution. This explanation brings down the vault and the well to every-day life; but facts are facts, and history must prevail over legendary lore or ingenious conjecture.

On the death of Maximin, in A.D. 313, edicts were issued by Constantine and Licinius that Christians should enjoy toleration; and shortly afterwards, when Constantine became sole monarch, Christianity was not only tolerated, but fostered and encouraged. Paganism was not persecuted, as Christianity had been; but, while Christianity basked in the sunshine of imperial favour, paganism pined in obscurity under the cold shade of neglect. Churches now sprang rapidly into existence, but the temples were still open to the few heathen worshippers that frequented them. In some exceptional cases, where the whole population of a city became Christian, the temples by general acclamation, without any authoritative edict, were closed, and sometimes demolished. From the pious horror entertained by Christians against idolatry, the temples were seldom metamorphosed into churches. At Jerusalem, the very fountain-head of Christianity, we may reasonably suppose that idolatry now utterly ceased. Helena, the mother of the Emperor Constantine, visited the Holy City and threw down the idols, and Constantine erected the grand basilica already mentioned over the site of the Holy Sepulchre;<sup>a</sup> but the Temple of Jupiter, though despoiled of its idol, was probably not converted into a church until the time of the Crusaders. Not only did a wholesome superstition prevent Christians from worshipping in the temple of an idol, but, as noticed by Dion, the tradition ran that the Temple of Jupiter had been founded by Hadrian on the very site of the Jewish temple; and it would have been thought a profanation to place the Lord's House on the site of that temple, of which not one stone was to be left upon another.<sup>b</sup>

It was just twenty years after the death of Maximin, viz. in A.D. 333, that the Bordeaux Pilgrim visited the Holy City; and the Temple of Jupiter and the Golden Gate were then both standing, for they *still* exist. In my former paper I commented upon the account given by the Pilgrim of the basilica of Constantine, erected on the western ridge of Jerusalem; and I shall now advert shortly to the Pilgrim's remarks upon the Temple Inclosure on the eastern ridge.

<sup>a</sup> Sulpic. Severus, lib. ii.

<sup>b</sup> Eutyhii Annal. vol. ii. p. 289.

I should premise that the Temple and the Golden Gate, however beautiful in themselves, appear to have had little attraction for the pious Pilgrim, in comparison with sites which were sanctified by tradition however monstrous. Taking his station on the Temple Platform, he points out the Pool of Bethesda on the side of the platform where the sick folk were healed—the high pinnacle at one of the angles where was the scene of our Lord's temptation—the great stone at the corner, the very one which the builders refused—the numerous chambers at the south-east angle now the substructions known as Solomon's Stables; and then he proceeds thus: "There, also, is the little chamber in which Solomon sat and wrote the Book of Wisdom, and the chamber itself is roofed by a single stone."<sup>a</sup> This little chamber can be no other than the cave under the Sakhrâh, and it is curious to see how a marvel grows. The tradition then was, that it was roofed by a single stone, and the Mahomedan tradition is, that the stone hangs in the air and is self-supported! The Pilgrim is then led by the mention of the cave to speak of the aqueducts with which it communicated. "There, also," he says, "are vast subterranean reservoirs of water and pools constructed with infinite labour." He then proceeds thus: "And in the *temple* itself, erected on the site of the temple built by Solomon, on the marble before the altar, you would say that the blood of Zacharias was only just spilt. There appear also over the whole floor the marks, as if printed in wax, of the nails of the soldiers who slew him."<sup>b</sup>

It is evident that the temple here referred to as then standing can be no other than the Temple of Jupiter, for the Pilgrim states that it stood on the site of the Temple of Solomon, and Dion tells us that the Temple of Jupiter had been erected on the site of the Temple of Solomon. Of course it could not be the Church of Constantine, for the Bordeaux Pilgrim and Constantine were contemporaries, and, if the tradition then was that the temple to which the Pilgrim refers stood on the site of the Jewish temple, it would follow that Constantine built his church, if this was it, on the site of the Jewish temple, and that the Sepulchre of our Lord was in the Jewish temple itself, which would be the height of absurdity. The Pilgrim too speaks in another part of "the crypt where our Lord's body was laid, and whence he rose on the third day, and in the same place (he continues), has lately been erected by command of the Emperor Constantine a basilica or Lord's

<sup>a</sup> Ibi etiam constat cubiculus in quo sedit (Solomon) et Sapientiam descripsit. Ipse vero cubiculus uno lapide est tectus.

<sup>b</sup> Et in æde ipsâ ubi templum fuit quod Solomon ædificavit, in marmore ante aram sanguinem Zachariæ ibi dicas hodie fustum. Etiam parent vestigia clavorum militum qui eum occiderunt in totam aream, ut putes in cerâ fixum esse.



House of wonderful beauty." As the *church*, therefore, was erected over the traditional sepulchre, and the *temple* to which the Pilgrim refers was erected on the traditional site of the Temple of Solomon, the two buildings must have been perfectly distinct.

It may be observed by the way that, as the Pilgrim speaks of the basilica on the western ridge as "just built," but mentions the temple on the eastern ridge without any such remark, we may conclude that the latter was not a recent structure, and this agrees with the fact that it had been founded by Hadrian, and restored or rebuilt by Maximin. The Pilgrim makes no reference to the Golden Gate by that name, and yet an incidental notice proves that it was then standing, and that the Pilgrim passed through it. "Also," he says, "as you go out of Jerusalem by the Eastern Gate to ascend Mount Olivet, is the valley called Jehoshaphat, and on the left (where are the vineyards) is also the stone where Judas Iscariot betrayed Christ (that is, the Garden of Gethsemane), but on the right is the palm-tree from which the children carried branches and strewed them in the way of Christ; and about a stone's cast from thence are two monuments of wonderful beauty, in one of which is buried the Prophet Isaiah, which is truly a monolith, and in the other Hezekiah the King of the Jews." Now, as you go out by the present Eastern Gate, called the Gate of St. Stephen, the Garden of Gethsemane and the monuments referred to are both on the right hand, but one who passed out by the Golden Gate would have the Garden of Gethsemane on the left hand, and the monuments on the right. It is evident, therefore, that the Golden Gate, which has now for centuries been closed by the Mahomedans, was open in the days of the Pilgrim, and was the gate commonly used for ascending Mount Olivet.

From the establishment of Christianity as the state religion of the Roman empire, the Temple of Jupiter appears to have been closed against idolatry but not open to Christianity, except during the Crusades, and consequently to have fallen into decay; at least when the Mahomedans took possession of Jerusalem, it is represented as a chaotic mass of filth and rubbish.

It is not my purpose to follow the fortunes of the building further; my only object was to show on historical evidence that the architectural features of the mosque may well be referred to the period between the commencement of the reign of Diocletian and that of Justinian, and that it is in fact the Temple of Jupiter Capitolinus restored or rebuilt by Maximin Daza, the successor of Diocletian.

IX.—*On certain Letters of Diego Sarmiento de Acuña, Count of Gondomar, giving an account of the affair of the Earl of Somerset, with Remarks on the career of Somerset as a public man. By SAMUEL RAWSON GARDINER, Esq., in a Letter to C. KNIGHT WATSON, Esq., M.A., Secretary.*

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Read March 22nd, 1866.

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MY DEAR SIR,

I have the honour to lay before the Society of Antiquaries copies and translations of some original documents from the archives of Simancas and Venice, relating to the passage of English history which formed the subject of a communication from Mr. Spedding on the 1st of March of the present year, and in doing so I can only regret that they were not before Mr. Spedding at the time when he was drawing up his Paper. In that case they would not merely have been in the hands of one who was most capable of making the best use of them, but they would have fallen into their natural place in the narrative which he prepared. He would have found in them the strongest confirmation of many of his arguments; but, amongst the new facts which would have thus been at his service, he would not have encountered one to necessitate the withdrawal or even the modification of a single statement.

As the case stands, it will, I think, be best that I should consider the papers in question as in some manner a supplement to Mr. Spedding's paper; and that, instead of attempting to tell the story over again with a few slight alterations, I should address myself to a question relating to Somerset's conduct which has, as yet, been almost untouched.

The absorbing interest which has been attracted by Somerset's private life has, perhaps, led us to undervalue the importance of the part which he took in the political history of the country.

To understand what that part was it will be necessary to go back to the date of the arrival of Sarmiento in England, in August 1613. He had been sent as a man likely to be successful in preventing the breach between England and Spain,

which appeared to be imminent. Ever since Philip had refused to give his daughter in marriage to Prince Henry, excepting on the condition that the bridegroom would declare himself a convert to the Roman Catholic Church, James had been drawing more closely the bonds which united him to the German Protestants, had given the Princess Elizabeth to the Elector Palatine, and after the death of his eldest son had opened negotiations for a marriage between Prince Charles and the sister of the King of France.

If there was ever in this world a born diplomatist it was Sarmiento, the man who under the name of the Count of Gondomar became afterwards so renowned in England and the world. Behind the ready wit and the courtly manner of a polished gentleman he concealed the iron will and the steadfastness of purpose with which he held in the grasp of his witchery the vacillating mind of James. Still more his own was the consummate skill with which he read the characters of those with whom he had to deal, by which he was enabled in each particular case to cover his hook with the appropriate bait. That without which all these qualities would have been wasted, was the inexhaustible patience with which he could resign himself to do nothing when the time for action had not yet arrived.

The first nine or ten months which he spent in England were passed by Sarmiento in masterly inaction. He wished to engage James in a renewal of the negotiations for the marriage; but he thought, justly, that after what had passed any proposition coming from him would be regarded with suspicion. It would be supposed that his sole object was to throw impediments in the way of the French alliance, with the expectation that any offers which he might make would be repudiated at Madrid as soon as they had served their purpose.

At the time when Sarmiento arrived in England Rochester (as Somerset was still called) was in firm union with the Howards. The Essex divorce case had nearly reached its termination. Overbury was a prisoner in the Tower, and had three or four weeks still to live.

"This Rochester," is Sarmiento's account of him in his first despatch, "is not, as they tell me, ill inclined towards the Catholic religion, nor does he wish to persecute the Catholics.<sup>a</sup> He is not ill affected towards your Majesty, for which reason he is opposed to the Duke of Lennox and Lord Hay, who are of the French party, and derive large pensions from France."

The state of parties in the council with respect to the cardinal point of foreign policy, the marriage of Prince Charles, is described in Sarmiento's despatch of

<sup>a</sup> Sarmiento to Philip III. <sup>August 27.</sup>  
September 6, 1613, Simancas MSS.



the 15th of January.<sup>a</sup> Archbishop Abbot and the Chancellor Ellesmere stood alone in demanding that the future Queen of England should be a Protestant. The Scotchmen Lennox and Fenton upheld the traditional policy of their country, and with Lord Zouch and Sir Julius Cæsar supported the French alliance. The Howards, Northampton, Suffolk, and Nottingham, together with Suffolk's son-in-law Lord Knollys, Worcester, who was a confessed Roman Catholic, and Lord Wotton, who secretly held the same faith, now that a Spanish match seemed to be impossible, had fallen back upon a project of a marriage with a Princess of the house of Savoy. It was with this last party that Rochester had now identified himself since he had formed the design of marrying Lady Essex, the daughter of the Earl of Suffolk.

For the first four months after Sarmiento's arrival, however, no very close intercourse sprung up, so far as we know, between the favourite and the Spanish ambassador. On the 26th of December the marriage between Rochester, recently created Earl of Somerset, and the divorced poisoner of Sir Thomas Overbury, was solemnised at the Chapel Royal. Amongst the crowd who hastened to heap presents at the feet of the bride and bridegroom was to be found the Spaniard, who brought a jewel valued at 780*l.* for the Earl, and diamonds valued at 768*l.* for the Countess.<sup>b</sup> Somerset, before venturing to accept the gift, asked permission of the King to do so.<sup>c</sup>

A few days however after the marriage an overture was made by Somerset to the ambassador. He sent Cottington, who had recently been employed as English agent at Madrid, to recommend him to ask for an audience, in order to influence the King against the French alliance. Sarmiento knew his own business far too well to comply with this request.<sup>d</sup>

On the 5th of April Sir John Digby, the ambassador at Madrid, returned from Spain in order to give account to the King of the names of the English pensioners of Spain. On the list which he produced were to be found four names of persons still alive and actually in receipt of Spanish gold. They were those of the Earl of Northampton Lord Privy Seal, of Sir William Monson the Admiral of the Narrow Seas, of Mrs. Drummond the confidante of the Queen, under whose influence Anne had all but openly declared her adhesion to the Roman Catholic Church, and of either the Earl or the Countess of Suffolk; for it

<sup>a</sup> Sarmiento to Philip III. January  $\frac{1}{2}$  $\frac{5}{3}$ , 1614, Simancas MSS.

<sup>b</sup> Accounts of Sarmiento for the year ending February  $\frac{2}{12}$ , 1614, Simancas MSS.

<sup>c</sup> Sarmiento to Philip III. May  $\frac{2}{12}$ , 1616, Simancas MSS.

<sup>d</sup> Sarmiento to Philip III. January  $\frac{1}{2}$  $\frac{5}{3}$ , 1614, Simancas MSS.

is not certain whether in this, as in the case of the charges which cost Suffolk his office four years later, the money accepted in his name was not in reality pocketed by his avaricious and intriguing wife. Some of the pensioners were now dead ; amongst them were to be found the honoured names of the Earl of Devonshire the conqueror of Ireland, of the Earl of Dorset the Lord Buckhurst of Elizabeth's court, of the Earl of Salisbury the foremost statesman of the early years of James's reign, and of Lord Kinloss and the Earl of Dunbar the most trusted of his Scottish councillors. Others, such as the Earl of Nottingham, Lord Haddington, Sir Thomas Lake, and Sir James Lindsay, had either relinquished or forfeited their pensions for reasons which cannot at present be in every case ascertained.<sup>a</sup>

Such a discovery would under ordinary circumstances have disposed James against Spain, and would have rendered Sarmiento's efforts to entangle him in a Spanish alliance hopeless. But within six weeks after Digby's arrival James had quarrelled with the House of Commons, and was anxiously looking to a policy of conciliation towards his Roman Catholic subjects as a means of counterbalancing the power of the malcontents in Parliament. Toleration, granted not from a sense of justice but for the furtherance of political objects, would have been a very questionable policy. What James proposed to do was something far worse ; he proposed to conciliate not his own Roman Catholic subjects, but the King of Spain. Their position for the present was to be something like that of prisoners in old sieges, led out to be tortured before the walls in order to induce the garrison to capitulate. Not a fine was to be remitted, not a priest was to be released from prison, until the King of Spain would consent to give his daughter to the Prince, and with her a portion, far larger than the King of France had offered, which would be sufficient to pay the King's debts and to release him from dependence upon Parliament.

James accordingly sent for Sarmiento and recounted to him his difficulties. Thus urged, the ambassador, who had held his tongue for nearly ten months, now broke silence ; James listened to his vague professions of the friendliness of the King of Spain, and the Parliament of 1614 was dissolved.

What the Spanish Government meant by according to Sarmiento permission to prepare the way for negotiations on the marriage treaty may be learned from the correspondence by which this permission was preceded and accompanied. One only consideration induced Philip III. to waive his demand that Charles

<sup>a</sup> No account of Digby's communication has reached us, but, as copies of the lists of pensioners still preserved at Simancas were undoubtedly in his hands, there can be no doubt what its tenor was.

should abjure his Protestantism ; and that was the assurance that the terms upon which the marriage was to be concluded would ensure, at no distant period, the return of England to its ancient submission to the see of Rome. If Sarmiento urged the acceptance of James's offer, it was on the ground that a mere connivance by the King at the non-execution of the penal laws against the recusants would be sufficient to secure the conversion of England ; for it was a fixed belief with him, as with most Spaniards, that if once freedom of discussion was allowed to the clergy of his own church, it was impossible for Protestantism, which in his eyes was nothing more than a mere congeries of absurd opinions, to hold its ground.

Whilst the Spanish Council of State was discussing the terms of the alliance, Somerset was, if possible, rising in the favour of the King. On the 10th of July the Earl of Suffolk was made Lord Treasurer, and Somerset himself became Lord Chamberlain in his father-in-law's place. Sarmiento saw the advantage of drawing closer the bonds which united him to the powerful favourite. He proposed<sup>a</sup> to his master that the pension of 1,500*l.* a year which had been vacated at Salisbury's death should be transferred to Somerset, and that a smaller pension of 500*l.* should be granted to Sir Thomas Lake, the candidate of the Howards for the vacant Secretaryship of State. Popular historians are accustomed to set down Sarmiento as the most profuse of ambassadors. The truth is that this 500*l.* a year, paid for about three years and a half to Lake, was the only pension paid at his request by the Spanish Government. Somerset's disgrace put an end to his pension before the first term of payment came round, and, though the name of Buckingham was almost immediately substituted for his, the new favourite resolutely refused to touch a penny of the money.<sup>b</sup>

On the 4th of November we find Somerset engaged in a confidential conversation with Sarmiento on the marriage ; Sarmiento told him that if only matters of religion could be accommodated, he did not doubt that the King of Spain would listen to the offer. Somerset replied that he would do his best to bring about an agreement.<sup>c</sup>

Meanwhile Digby, who had returned to his post at Madrid, was pushing forward the negotiations in an unofficial manner. Digby's position towards the match was peculiar. What it was may be best learned from a letter

<sup>a</sup> Sarmiento to Philip III. October 7<sup>th</sup>, 1614, Simancas MSS.

<sup>b</sup> Notes to the accounts of the Spanish Embassy in England, August 1<sup>st</sup>/<sub>2</sub>, 1622, Simancas MSS.

<sup>c</sup> Sarmiento to Philip III. November 1<sup>st</sup>/<sub>2</sub>, 1614, Simancas MSS.



written by him to Prince Charles in the spring or summer of 1617. It ran as follows <sup>a</sup>:—

SIR,—The opinion that I have ever presumed humbly to offer unto his Majestie concerning your Highnes marriage hath beene that bothe in regard of conscience and satisfaction to his Majestie's people and allies, as likewise for the securitie and quiett of his Majestie's Estates, that your Highnes mighte take to wife some Protestant Princesse, although shee were neyther daughter to a King, or had any so ample portion as mighte relieve the King's present necessities; for that there might many meanes bee found for helping of the King's wants, either by some few years' providence, or by the joining of the affection of the people to the supplying of his Majestie by the way of subsidies in Parliament. Whereas contrariwise yf the number and power of the Papists shall bee increased, as undoubtedly yt will bee by your Highnes matching with any Catholic Princesse whatsoever, through the commerce which must bee of necessitie for the exercise of her religion for herselfe and familie within your Highnes Courte; and thereby by degrees these two different Religions shall growe to an equalitie of power, which will bee of greate hazard and disquiett to the State, and not to bee redressed without great danger and courses of greater violence then is proper or usuall for this State to putt in practise. But, in case his Majestie out of his wisdom and considerations best knowen to himselfe, holde yt fittest that your Highnes matche with France or Spayne, or any other Catholick, eyther for that the present tyme affordeth no Protestant Princesse which is for yeares or blood suitable to your Highnes, or that can in any considerable measure by her portion supply his Majestie's present want, I then conceive that the matche by which this State shall suffer leaste inconvenience and cumber, and whereby your Highnes' issue will have the moste undoubted and unquestionable royall blood; and whereby his Majestie's necessities shall (by the greatness of the portion) bee the most relieved, is with Spayne; yf such a matche may bee made with suche conditions of religion as other Catholick Princes will content themselves withall. Thus much I thought fitt humbly to present unto your Highnes, for that I see my imployment lyable to the censure of many worthy and religious men; with whom though I concur in my opinion, yet I seeme muche to differ from them in my wayes. For that yt is more proper for mee to be true to my master's ends and service then by declaring this to procure theyr satisfaction. Only to your Highnes I thought fitt to make this declaration; and shall bee a suitor for your favour, as you shall see me really labour to putt this in effect. And yf his Matie shall eyther upon motion of Parliament, or any other proposition that shall be made unto him, thinke yt fitt to proceede with a Protestante matche, as I shall wishe as well unto yt as any man living, so I hope in suche sorte to manage the present busines that I have in hand, as yt shall rather muche further, then in any way crosse or hinder yt. But in case his Majestie shall not bee drawn to hearken to any proposition for a Protestant matche, I then conceive that your Highnes bothe dothe and will approve that I

<sup>a</sup> The letter as here printed is taken from a copy preserved in the writer's defence of his conduct, written in 1624, Tanner MSS. lxxiii. fol. 449. The fact that this defence was to come under the then hostile eye of the Prince is a sufficient guarantee for the correctness of the copy. The letter was afterwards laid before Parliament in 1626, and is to be found printed in the State Trials (ii. 1408), with several verbal discrepancies, and with the omission of one clause:—"and whereby your Highnes' issue will have the most undoubted and unquestionable royall blood."

really and effectually labour to procure a matche for your Highnes with Spayne upon such conditions in point of religion and portion as to his Majestie shall seeme fitt.

With such opinions it can hardly be wondered that Digby, upon his arrival at Madrid, was in a critical mood, and by no means ready to embrace the whole scheme of the Spanish Government.

The consequences of Digby's scrupulousness will be best told in the words of Sarmiento's despatch<sup>a</sup> of the 18th of April, 1615, especially as the story affects the history and in some respects the character of a man so deservedly respected as the antiquary Sir Robert Cotton.

"This King and the Earl of Somerset," he writes, "have sent in great secrecy by Sir Robert Cotton (who is a gentleman greatly esteemed here, and very curious about manuscripts, with whom the King has deposited all his archives), to tell me what Sir John Digby has written about the marriage of the Infanta with this Prince, informing me that he was greatly pleased that the negotiation had been so well received in Spain, because he desired its conclusion and success. He enlarged upon the conveniences of the marriage, but said that the King considered that Digby was not a good negotiator, because he was a great friend of the Archbishop of Canterbury and the Earl of Pembroke, who were of the Puritan faction, and was in correspondence with them. This, he said, was very inconvenient, because the King could not speak clearly in matters of religion, nor say or do that which he wished, which was that everything should be done so as to give satisfaction to your Majesty; because it might be that the ambassador would discover it to these other people, and would thereby cause commotions and rebellions in this kingdom, which would be hurtful to himself, to it, and to the business.

"And that therefore it was convenient to treat in great secrecy, so that nothing might be known till it was concluded, and that when it was all arranged this inconvenience would be at an end, because the union settled with your Majesty would give him such force and authority that the malcontents would not dare to execute anything to his hurt.

"In order to make a beginning, he must beg your Majesty to answer three questions. In the first place,—Does your Majesty believe that with a safe conscience you can negotiate this marriage? In the second place,—Is your Majesty sincerely desirous to conclude it upon conditions suitable to both parties? In the third place,—Will your Majesty abstain from asking anything in matters of religion which would compel him to do that which he cannot do without

<sup>a</sup> Sarmiento to Philip III. April  $\frac{18}{28}$ , 1615, Simancas MSS.

risking his life and his kingdom; contenting yourself with trusting that he will be able to settle matters quietly? When an answer is given to these questions he will consider the matter as settled, and will immediately give a commission to the Earl of Somerset to arrange the points with me.

"This Sir Robert Cotton is held here by many to be a Puritan, but he told me that he was a Catholic, and gave me many reasons why no man of sense could be anything else.

"That which I hold to be certain is, that, because Somerset is not a friend of Sir John Digby, he is trying to take the negotiation out of his hands, thinking that, merely by treating concerning it, Digby will gain influence, and much more if it is concluded by his means; and that he himself will obtain authority if it passes through his own hands, and that he will thereby preserve the favour of the King, of which he has suspicions; and that for these reasons he cherishes the King's jealousy of Sir John Digby."

Towards the end of the letter he writes, "Sir Robert Cotton, who has treated with me in this business, tells me that after the marriage is agreed upon, before the Infanta arrives in England, matters of religion will be in a much improved condition, and so your Majesty will be pleased to keep Digby in good humour, and to go on with the negotiations both here and there in such a manner that we can make use of them as is most convenient, for, whatever they may tell me, if Digby writes against the marriage he will throw everything into confusion."

Of Cotton's share in the business there can be no doubt whatever. From a letter written by him to Somerset, evidently during this very month, which is to be found amongst the Harleian MSS.,<sup>a</sup> we know how completely he made himself the mouthpiece of Sarmiento's policy. It was now only twenty months since he had drawn up, it is said at the King's request, a treatise, in which he had argued, it is true, that it was better that the Catholic priests should be imprisoned than that they should be put to death; but he had argued his case from a decidedly Protestant point of view, and had taken care to put himself forward as a thorough, if not an extreme, Protestant. It is certainly possible that he may, in the course of twenty months, have changed his opinions; but Sarmiento's expression, that "he is held by many to be a Puritan," renders it, I fear, hardly necessary to have recourse to such an explanation of his conduct.

Somerset's position is equally clear. He had placed himself at the head of the Spanish and Catholic party in England.

<sup>a</sup> 7002, fol. 378.



The King's intentions are more difficult to unravel. But at all events the arrival of fresh despatches from Digby forced him to reconsider his position. They contained the points which had been set down in Spain as the basis of negotiation, with Digby's notes written on the margin. Whether it was that Digby's observations struck his fancy, or that the Spanish Articles, now that he saw them for the first time in black and white, disgusted him, it is certain that the shrewd notes which he himself scribbled down by the side of the page showed no readiness to give himself blindly up to Somerset's schemes.

The Articles, with the two sets of notes, are as follows<sup>a</sup> :—

ART. 1.

The theologians have found many difficulties touching the marriage, but no impossibilities; these may be overcome according to the greater or less advantage given to the Catholic Religion; and the whole matter is to be arranged with the dispensation of the Pope, and by throwing ourselves at his feet.

*Digby's Note.*

Although many and very learned Catholics are of opinion that in this case, in which so many and clear advantages are to result to the Catholic Religion, the marriage can be lawfully contracted, even without the Pope's dispensation, yet in this His Majesty proceeds in accordance with his prudence and piety, taking the step which is most safe for his conscience, and which will give the greatest satisfaction to the world. However, it seems just that His Catholic Majesty should obtain from the Pope, before the formal negotiation of the marriage commences, such assurances that the King of England may be certain that, after the conditions are agreed to, everything will not become void by the Pope's refusal to meddle with it.

*The King's Note.*

Let the King of Spain procure what dispensations he pleases, as may suit his conscience, it being a thing with which I have nothing to do.

ART. 2.

The education of the children is to remain in the charge of the Infanta, as is the law of the Church; and if this is not allowed, let them be left to follow which religion they please, without being compelled to anything.

ART. 3.

They are to be baptized according to the use of the Roman Church, and by a Catholic minister.

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<sup>a</sup> Paper relating to the marriage, March  $\frac{13}{29}$ . The King's notes undated, but before May  $\frac{20}{30}$ , 1615, Simancas MSS. This paper, and all others which I have quoted from the Simancas Archives, are in Spanish. For the translation I am answerable.

*Digby's Note on Articles 2 and 3.*

As to the education of the children, it seems that it can be capitulated that they are not to be forced and compelled to be otherwise than Catholics; and as for their baptism, after the use of the Roman Church, and by a Catholic minister, it seems to him that in consideration of the state in which things now are it would be well to have no public agreement on this point, as this is a public ceremony at which the greater part of the realm is accustomed to assist; besides that the Catholic Church holds the baptism which is at present in use in England to be valid and effectual, and so he is of opinion that the Article should stand thus:—"The children of the marriage are to be left to follow whichever religion they choose, without being compelled to anything."

*The King's Note on Article 2.*

It is clear that I, too, shall be careful to instruct my children in my religion, since I am as confident of its goodness as the King of Spain is of the goodness of his; yet there shall be no compulsion on one side or the other.

*On Article 3.*

The children are to be baptized after the use of England.

## ART. 4.

If the children of this marriage are Catholics, they are not therefore to lose their right to succeed to kingdoms and lordships of their father.

*Digby's Note.*

In this all possible security will be given.

*The King's Note.*

The laws of England teach and oblige subjects to obey their King of whatever religion he may be. It is only the Jesuits who teach the contrary.

## ART. 5.

The Infanta shall take her household with her, who are to be Catholics, down to the servants of her servants.

## ART. 6.

The wet-nurses of the children are to be Catholics, they too being of the household.

*Digby's Note on Articles 5 and 6.*

The Infanta may choose her own household, and the wet-nurses are to be chosen with her consent, and to be of her household.

*The King's Note on Art 5.*

All who are brought by the Infanta as of her household are to have liberty of religion.

*On Art. 6.*

The wet-nurses to be such as the physicians shall choose on account of their good health.

ART. 7.

The chapel is to be large, free, and public, and there are to be administered the sacraments and offices in accordance with the use and the ceremonies of the Roman Church.

*Digby's Note on Article 7.*

The place to be appointed for Divine worship is to be decent, large, free, and public for all those of the Infanta's household, and in it are to be celebrated the sacraments and offices according to the use and the ceremonies of the Roman Church.

*The King's Note.*

The Infanta is to have a large chapel or oratory.

ART. 8.

If the Infanta has a particular or private oratory, there shall be a public church for all the household, where the sacraments are to be administered and the dead Catholics of the said household interred; and the public exercise of Divine worship is to begin as soon as the Infanta enters England.

*Digby's Note on Article 8.*

A consecrated place is to be set apart for the interment of the dead of the aforesaid family, and Divine worship is to commence when the Infanta enters England.

*The King's Note.*

The household will not have any other church or chapel, but a decent place to bury their dead in.

ART. 9.

Ecclesiastical and religious persons of the Royal household are to go about in their proper habits.

*Digby's Note on Article 9.*

In this it seems there will be no difficulty worth speaking of.

*The King's Note.*

It will cause scandal.

ART. 10.

After the dispensation has been granted by his Holiness, the marriage is to be celebrated here in Spain per verba de præsente, by proxy, according to the law of the Council of Trent, and the years and ages are to be without supplement, waiting the ten days; and the Infanta shall receive the nuptial benediction.



*Digby's Note on Article 10.*

As this proposal is totally new, no answer is given to it, yet it seems that it will be easy to understand that many difficulties may arise from it.

*Note to the words "years and ages."*

He thinks that within this time it will be desirous that the betrothal shall take place.

*The King's Note.*

They can be married in Spain cum verbis de præsente, and by proxy, yet they will also have to be married personally by an English Bishop.

## ART. 11.

That amongst the Catholic ministers there is to be one who has jurisdiction, in order that, in case it shall be necessary, he may correct any of the household who may offend in anything touching our holy faith and religion.

*Digby's Note on Article 11.*

Amongst the Catholic ministers is to be one who has the necessary power and authority for the necessary government of the rest, and of the household, in all things touching our holy faith and religion.

*The King's Note.*

They may have the government and rule which they wish.

## ART. 12.

Pledges are to be given us that these conditions will be kept.

*Digby's Note on Article 12.*

In this it seems that when the rest is settled entire satisfaction will be given on this head.

## NOTE.

The question of toleration of our religion is not treated here, because it is a thing which has been offered already.

*Digby's Answer to the Note.*

I do not know what has been offered in England on this head; but I think that nothing is to be said about it in the way of capitulation, but that his Catholic Majesty will urge the King of England secretly to connive at the non-execution of the laws against the Catholics.

In the copy sent to England the following Articles were substituted for the Note:—

ART. 13.

The Catholics are to be permitted by connivance and forbearance to live in the Catholic religion.

ART. 14.

The execution of the laws against them is to be suspended, the officials not being permitted to vex them.

*The King's Note on the Articles 13 and 14.*

To this no answer is to be given till we have agreed upon the rest.

Digby's notes are no doubt in accordance with the instructions which he received when he left England. With the unexpected roughness of James's replies Sarmiento was at first puzzled. He was not long in discovering, however, that the change was not owing to any large and worthy motives: partly, James was frightened by the trial of Owen, who had just been convicted of high treason for saying that "the King, being excommunicated by the Pope, might be lawfully deposed and killed by any whatsoever," and partly by the thought that the alliance upon which he had set his heart might turn out to be in the interests of his son rather than in his own. Might not Charles, strong in the support of the King of Spain and of the English Catholics, be persuaded to head a rebellion against his own father? James saw, in the not-distant future, his own dethronement, and he pictured himself as an old and worn-out man, reduced to end his days in a dungeon, of which his son and the wife with which he had provided him would keep the keys. It would be well if that were all; for, as he was heard to say, a deposed king might easily be murdered by his own children. On another occasion he pointedly asked Sarmiento what possible motive Charles V. could have had for abdicating in his son's favour, in a tone which convinced Sarmiento that he had no intention of imitating the example of the Emperor.

On the 22nd of June, however, all this hesitation was at an end. How James got over his scruples we do not know; but it is certain that on that day Cotton returned to the ambassador and told him that, with some not very important modifications, the King was ready to take the Articles for the basis of negotiations.

As soon as Cotton had made this announcement, Sarmiento tells us "he said that the Earl of Somerset had set his rest upon it, and had gained over the Duke

of Lennox, and had induced him to persuade the King that the Spanish alliance was better than one with France; the Earl of Somerset having run the risk either of improving his position and strengthening himself if it succeeded, or of ruining himself if it failed. Cotton concluded the conversation by telling me that he was mad with joy at seeing things brought to this state, as he did not wish or desire anything more than to live and die an openly professed Catholic as his fathers and ancestors had done."

"Upon this," continues Sarmiento, "I gave him an embrace, telling him that God would guide everything as was most conducive to His holy service."

And so, leaving Cotton and Sarmiento locked in one another's arms, we may let the curtain fall upon the first act of the long drama of the Spanish match.

How far James was betrayed by Somerset,—whether the favourite exceeded the instructions which were given him, are questions to which we cannot give any certain answer. Sarmiento, indeed, writes on the  $\frac{2}{17}$  of May, that Cotton had been arrested "because the King says that he exceeded his instructions, and some have tried to prove that it was by Somerset's orders: however, Cotton being examined very particularly on this subject, has said that the King himself gave him his instructions to speak as he did, as he believes, and as far as he can recollect; but that it may be that he misunderstood him."<sup>a</sup>

It must be remembered that Cotton had lately been engaged in antedating letters for his patron, so that his character for truthfulness cannot be rated very high. But there is something more than mere negative evidence in James's favour. When he received Digby's despatch <sup>b</sup> of the 16th of December, in which Somerset's proceedings were unveiled, "The next day, in the afternoon," according to Sarmiento, "he summoned the Chancellor and my Lord Coke, and, although he was confined to bed by the gout, he was conversing with them with closed doors the whole afternoon; and the result of this consultation was, that the Chancellor and the Chief Justice sent for the Lieutenant of the Tower, and ordered him to arrest Sir William Monson, on the pretext that Sir William Monson had spoken and talked about his brother's pension—that if his brother were executed, he would have to die with him. This, however, was an invention."

Sarmiento then goes on to say that the truth was, that there was a desire to investigate the real history of the pensions.<sup>c</sup>

Now, considering that Digby's despatch contained, also, a complaint against

<sup>a</sup> Sarmiento to Philip III. May  $\frac{2}{17}$ , 1616, Simancas MSS.

<sup>b</sup> Digby to James I. December 16, 1615, State Papers. Spain.

<sup>c</sup> Sarmiento to Philip III. January  $\frac{29}{30}$ , 1616, Simancas MSS.



Somerset for taking the negotiation out of his hands, it seems highly improbable that James, if he had anything to conceal, would have put the matter before Ellesmere and Coke. If he had wished to hush the matter up, nothing would have been more easy. Digby was emphatically what is sometimes called "a safe man"—a hint from the King that he was to ask no questions would have been enough for him.

But, whatever may have been the truth about James, this at least is plain, that it is Somerset, and not the King, who was from beginning to end regarded by Sarmiento as the main support of the alliance. Such being the case, it is equally plain that it was not merely from personal dislike of his unendurable arrogance that the party was formed by which he was hunted down, and which welcomed a charge against him of making away with the crown jewels in the summer, and a charge of poisoning in the autumn, of 1615; in the same way that Buckingham welcomed a charge of embezzlement against Suffolk in 1618, and that the House of Commons welcomed a charge of bribery against Bacon in 1621. In those days a criminal prosecution was the readiest way of waging political warfare.

The Spanish negotiations were to drag their weary length along for eight more years. But never for a moment after Somerset's fall did the Spanish Government venture seriously to hope for the conversion of England. It soon came to be regarded by Philip and his ministers simply as a bait to be dangled before the eyes of James, by which they might influence his foreign policy, and might hinder him from embracing the cause of the German Protestants.

Yours faithfully,

S. R. GARDINER.

## APPENDIX.

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### 1.

*Diego Sarmiento de Acuña to the Duke of Lerma.*

October  $\frac{20}{30}$ , 1615.

[Archives of Simancas, 2594, fol. 40.]

En algunos despachos he ydo dando cuenta a V. E. de la fortuna del Conde de Somerset, y de la fuerza que han ydo cobrando contra el sus enemigos, y en carta de 28 de Julio dixe a V. E. como Homero me havia dicho que pretendia el Conde que el Rey le diese un perdon general con el sello grande, y que entendia que se lo havia concedido.

Fue assi, y el Rey le dio su perdon firmado de su mano y sellado con su sello privado, ordenando al Gran Canciller que le despachase el privelegio con el sello grande (que es cosa necessaria en este Reyno para que las escrituras y mercedes sean irrevocables). El Chanciller no le quiso passar, y dixo que daria cuenta al Rey y al Consejo de las causas en que lo fundaba, y quitando el Rey el Consejo, el dia que se partio aqui para su progreso (que fue a 30 del mes de Agosto) le hizo el Somerset una oracion que el Rey mismo le avia ordenado (segun tambien me han dicho), diziendo

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In some of my despatches I have given account to your Excellency of the fortune of the Earl of Somerset, and of the increasing strength of his enemies; and in a letter of the  $\frac{18}{28}$  of July, I informed your Excellency that Homer\* had told me that the Earl demanded that the King should give him a general pardon under the great seal, and that he understood that his request had been granted.

This was the case, and the King gave him a pardon signed with his hand and sealed with the privy seal, ordering the Chancellor to pass the patent under the great seal, which is necessary in this kingdom to make grants and concessions irrevocable. The Chancellor would not pass it, and said that he would give account to the King and the Council of the reasons upon which his refusal was founded; and as the King was leaving the Council, the day on which he set out for his progress, which was the  $\frac{30}{30}$  of August, Somerset made him a speech, which had been arranged, as I

\* This is one of the nicknames employed in this correspondence. I do not know who the person signified is.

que la malicia de sus enemigos le havia forzado a pedir el pardon, alegando razones de la inocencia, y suplicando al Rey que mandase al Chanciller que si sabia algo contra el, lo dixere alli, y si no, que pusiese el sello. El Rey, sin consentir que hablase nadie, dixo mucho en alavança de Somerset, concluyendo con que havia hecho muy bien en pedir el pardon, y que el se le havia dado con mucho gusto, no porque lo haviere menester en sus dias, que desto bien seguro estaba, y se lo dezia assi, para que se desengañasen todos; pero que queria que el Principe que estaba presente, poniendo le el Rey la mano y diziendo, para que este no pueda deshazer lo que yo he hecho; y volviendose al Chanciller le dixo, “y assy, Milor Chanciller, poned luego el sello, que esta es mi voluntad.”

El Chanciller se hincó de rodillas, suplicando al Rey le oyese las causas que tenia para no poner el sello, ponderandolas, y diziendo que las clausulas que llevaba eran cosas generales, y sin exception nunca vistas, añadiendo que, pues el Rey havia hecho al Conde de Somerset guarda y alcaýde de su palacio, desseaba saber si era su voluntad darle las joyas, colgadas, tapicerias, y todo lo que havia en palacio, pues mandaba en el pardon que no se le pudiese pedir quenta de nada, concluyendo con suplicar al Rey que, pues daba este genero de pardon a Somerset, y queria que el lo pasase, le diese al mismo Chanciller orden por escrito, perdonandole el delito y culpa de pasallo; pues de otra manera no lo podria hazer, ni lo havia; de que el Rey se enfado mucho; diziendo que el mandaba que lo pasase, y que lo pasase. Levantandose con esto del Consejo, y entrando en su aposento; pero sabiendo la Reyna, fue luego al Rey, y ella y los enemigos de Somerset hizieron tales dili-

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was told, by the King himself, saying that the malice of his enemies had forced him to ask for a pardon, giving reasons to prove his innocency, and praying the King to order the Chancellor, if he knew anything against him, to say it there. The King, without permitting anything to be said, spoke at length in praise of Somerset, concluding by saying that he had done very well in asking for a pardon, and that he had granted it to him with great pleasure, not because he would have any need of it in his own days, for during his life he was quite safe (and this he said in order that they might all undeceive themselves), but because he wished that the Prince (who was present)—here the King put his hand upon him, and said: “that he may not be able to undo that which I have done. And so, my Lord Chancellor, seal it immediately; for that is my will.”

The Chancellor threw himself upon his knees, praying the King to listen to the reasons which hindered him from sealing the pardon, making the most of them, and saying that its clauses were general, and without a single precedent; adding that since the King had made the Earl of Somerset guardian and keeper of his palace, he wished to know whether it was his will to give him the jewels, the hangings, and the tapestry, and everything that was in the palace, since it was in the pardon that no account was to be taken of him for anything; concluding by praying the King that, since he gave this kind of pardon to Somerset, and wished him to pass it, he would give to himself, the Chancellor, an order in writing, pardoning him his fault and offence in passing it; for in no other way would he be able to do it, nor would he do it. With this the King grew very angry, saying that he ordered him to pass it, and that he was to pass it. With this he rose from the Council, and went to his apartments; but the Queen, hearing what had happened, went straight to the King, and she and the enemies of Somerset were so busy with him, and perplexed him so, that



gencias, embaraçandolo de manera que en fin el Rey se fue sin que el perdon se despachase, ni se ha despachado.

Aunque se tiene por cierto que el Rey ha continuado el amar al Conde de Somerset, y tener con el muy estrecha confidencia, y le ha ydo dando particularissima quenta de todo lo que hazen y dizen contra el, y por su intercession hizo pocas dias ha del Consejo de Estado al Obispo de Venchestre a pesar del Arçobispo de Cantuaria y de todos los de la faccion contraria, y ha hecho otras acciones emprueba de la continuacion desta gracia ; y al Vilers que es el nuevo privado, aunque le haze muchos favores publicos, y le va dando renta, no se ha visto por su mano salir accion ni demonstracion de importancia:—

Pero el aver visto que el Rey tolero el no pasarse al perdon de Somerset, y mostraba oyr gratamente los males que le dezian del, ha dado tanta fuerz a asus enemigos, que esto, y el ampararlos la Reyna, en que no ha havido cura ni el Somerset ni ha savido ni querido ayudar, lo puso en estado que havia en la misma camara del Rey donde el es Camarero Mayor, personas que ni le hablaban, ni le quitaban el sombrero, y han ydo buscando cosas contra el Somerset, y empeñando al Rey de manera que se veen oy el Conde y el Rey mismo en sumo cuydado y embaraço.

Tubo el Conde de Somerset un entrechissimo amigo que llamaba Don Thomas Ovarberi, Cavallero de buenas partes y entendimiento. Este tenia tanta autoridad con el Conde de Somerset que el Rey vino a dessear apartarsele, y assi le nombro por Embaxador a Flandes. No lo acepto ni

in the end he went away without the pardon being completed, and it has never been completed to this day.

Although it is thought to be certain that the King has continued his affection to the Earl; and that he treats him as his intimate confidant; and that he gives him most particular account of all that is done or said against him; and that at his intercession a few days ago he placed in the Council the Bishop of Winchester, to counterbalance the Archbishop of Canterbury and all those of the contrary faction, and that he has done other actions in proof of the continuance of his favour; and that, although he shows much favour in public to Villiers the new favourite, and has given him a pension, yet no act or demonstration of importance has been known to pass through his hands:—

Nevertheless, it being seen that the King put up with the keeping back of Somerset's pardon, and that he seems to hear with pleasure the evil things that are said of him, has given such strength to his enemies, that this, and the support given to them by the Queen (to whom Somerset did not pay sufficient respect, nor has he known how to protect himself against her, nor shown any disposition to do so,) have brought him to such a condition, that in the very chamber of the King, where he is Lord High Chamberlain, there are persons who will neither speak to him nor take off their hats to him: and they have been searching for charges against Somerset, and throwing their toils round the King to such an extent that at present both the Earl and the King himself are in the greatest trouble and embarrassment.

The Earl of Somerset had a most intimate friend, who was called Sir Thomas Overbury, a gentleman of good parts and understanding. He had such authority with the Earl of Somerset that the King came to desire to separate them, and accordingly named him ambassador to Flanders. He

quiso salir de aqui, y por esto y algunas palabras que dixo, le mando el Rey poner in la Torre. Ay opinionces de que y a el Conde de Somerset estaba cansado del, y lo cierto es que este Ovarberi con gran fuerça persuadia al Conde de Somerset que de ninguna manera tratase de dexarse a la Condesa de Essex, a lo menos para casarse con ella. Y dizen tambien que el Conde de Somerset le havia dado la palabra de hazerlo assi.

Murio este Ovarberi presso en la Torre dos años a, y agora Don R. Genut, Secretario del Estado, alentado del Conde del Gerosueri y del de Arundel, y del Arçovispo Cantuariense, dixo al Rey que por orden de la Condesa de Somerset y del Conde havian atosigado y muerto con ponzona al Ovarberi, y que el Alcayde de la Torre dezia que un criado del Ovarberi se lo havia dicho assi, y aun havia querido valerse del Alcayde para hazello fiado, en que el Alcayde lo savia o por lo menos ayudaria a ello, siendo causa de personas tan favorecidas como el Conde de Somerset y la Condesa, que era hija del Conde de Sufolc.

El Rey y el Conde de Somerset, o porque tuvieron esto por cosa que no se podia provar, y que antes dexaria al Somerset acreditado y vitorioso, y al Rey le acreditaria tambien de justo en dessear que se averiguase <sup>a</sup> resolucion que se pusiese en justicia; y assi hizo el Rey desto en el Consejo una gran protestacion ante Dios, y que descaba que se hiziese justicia, y que ni privado ni su mismo hijo ni cosa del mundo se lo estorbaria, y con gusto del Conde de Somerset nombro para la averiguacion dello a Milor Cuq, Justicia Mayor de Inglaterra, que era hechura y intimo amigo del

did not accept the post, and refused to leave England; and for this reason, and for some words that he uttered, the King ordered him to be sent to the Tower. Some are of opinion that the Earl of Somerset was already tired of him; and it is certain that this Overbury vehemently persuaded him in no way to abandon himself to the Countess of Essex, at the least not so as to marry her. And they also say that the Earl of Somerset had promised him that he would do as he wished.

This Overbury died a prisoner in the Tower, two years ago; and now Sir Ralph Winwood, the Secretary of State, animated by the Earls of Shrewsbury and Arundel, and the Archbishop of Canterbury, has told the King that, by the order of the Countess of Somerset and of the Earl, Overbury was poisoned and murdered; and that the Lieutenant of the Tower said that a servant of Overbury's told him so, and even wished to make use of the Lieutenant, so as to make a confidant of him, on the supposition that the Lieutenant knew what was going on, or at least would be ready to help in it, as it was the cause of persons in such favour as the Earl of Somerset and the Countess, who was a daughter of the Earl of Suffolk.

The King and the Earl of Somerset, either because they considered this a thing which it was impossible to prove, and which would be more likely to leave Somerset with credit and victory, and which would also bring credit to the King as being just in desiring the investigation (or for some other reason), took the resolution that he should be brought to justice; and so the King made in the Council a great protestation before God of his desire to see justice done, and that neither his favourite, nor his son himself, nor anything else in the world, should hinder him; and with the good pleasure of the Earl of Somerset, he named for the investigation my Lord Coke,

<sup>a</sup> Some words must be omitted here, perhaps "o por otra razon, tomaron una."

Somerset, pero animoso, eloquente, y deseoso de opinion y credito con el pueblo ; y esto y la fuerza de los enemigos del Conde de Somerset en solos tres dias le hizieron trocar forma, y yrse cebando y encarnando en la averiguacion, retinandose del Somerset y de sus amigos y de dalles quenta de lo que havia y hazia.

El Alcayde de la Torre dixo que esta assi que Don Thomas Monson, hermano del Almirante del estrecho Don Guillermo Monson, que son muy de la casa del Conde de Suffolc, havia embiado a la Torre con orden del Conde de Somerset a Guarston, para que serviese a Don Thomas Ovarberi, y que, dentro de dos dias que llevo en su preseneia, quiso hechar unos polvos de veneno en un caldo que se daba al Ovarberi, preguntando al Alcayde si seria bueno hechar alli aquello, y que diziendole el Aleayde, que era ello ; le respondio, pues aun no lo save, es el veneno para Ovarberi, y a mi sue havian dicho que aun sue ayudaria ; que el Alcayde se lo estorbo y hecho los polvos a mal, reprehendiendo mucho al criado Guarston, que no hiziese tal trayeion, y que tan poco dixese que el se lo havia estorbado, que el eriado le prometio lo uno y lo otro.

Que despues vino a morir dentro de pocos dias el Ovarberi con una medicina que le hecharon con que hizo sesenta y tantas cameras hasta que espiro, que el Aleayde no se atrevio por entonces a dezir nada por ser tan grandes las personas a quien aquello tocaba, pero que esta esto la verdad.

Prendieron luego el criado, el qual al principio lo nego todo, pero careado con el Alcayde, y apurada la causa, lo confesso en la misma forma que el Alcayde lo havia dicho, diziendo que Madama

Chief Justice of England, who was the creature and intimate friend of Somerset, but a man of high spirit, eloquent, and desirous of credit with the people ; and this, together with the pressure of Somerset's enemies, made him, in no more than three days, turn round, and become excited and bloodthirsty in the investigation, withdrawing himself from Somerset and his friends, and ceasing to give them information of what he was doing.

The Lieutenant of the Tower said that the case was that Sir Thomas Monson, the brother of Sir William Monson, the Admiral of the Narrow Seas, both of them being closely dependent upon the house of the Earl of Suffolk, had sent to the Tower an order from the Earl of Somerset to Weston, that he should attend upon Sir Thomas Overbury ; and that within two days of his coming he wished to put a poisonous powder into some broth which was to be given to Overbury, asking the Lieutenant if it would be well to put it in ; and that when the Lieutenant said to him : " What is it ? " he answered, since he did not know : " It is the poison for Overbury ; they told me that you would help me." That the Lieutenant was troubled and threw the powder away, blaming the servant Weston much, and telling him not to commit such treachery, nor to say that he had interrupted him ; and that the servant promised both one and the other.

He also said that a few days afterwards Overbury died of a medicine which was given him, which produced sixty or more stools till he expired : and that the Lieutenant did not then dare to speak because so great persons were touched by it, but that this is the truth.

The servant was immediately arrested, who at first denied everything, but after he had been confronted with the Lieutenant and the case had been sifted, confessed that it was exactly as the Lieutenant had said, saying that Mrs. Turner, a highly favoured servant of the present Countess of



Turner, una criada muy favorecida de la Condesa que oy es de Somerset, que entonces lo era de Essex, havia hecho estetrato con el, y dadole los mismos polvos de la ponzona para que los diese.

Fue luego presa la criada, y, aunque nego, y ha estado firme en la negativa, con los demas y la buena voluntad, y otras circunstancias se tubo la causa por probada, y el Justicia Mayor se partio a Royston, que es treynta y tantas leguas de aqui, a donde el Rey estaba, a darle quenta dello.

El Conde de Somerset, que estaba con el Rey, haviendo tenido aviso de lo que pasaba, venia aqui a hablar a Milor Cuq, y, encontrandole en el camino, le pidio que se volviese a Londres; pero ni esto ni el dezirle el estado que tenia el negocio lo quiso hazer; y pareciendole al Conde de Somerset que estaba muy seguro del Rey, y que era indignidad que hazer mucho caso del negocio volverse con Milor Cuq, le dixo yr al Rey, y el se vino a Londres, diziendo que benia a ver a su muger, y, aunque el dia siguiente muy temprano se volvio a partir en busca de Rey, ya topo a vuelta a Milor Cuq, que con solo saludarse passaron el uno por el otro.

Luego que llego a Londres el Milor Cuq, hizo juntar el Consejo de Estado, que el es tambien del, y exhibio una comission que el Rey daba para este casso al mismo Milor Cuque, al Chanciller, a Milor Suche, y al Duque de Lenox, y que si ellos quisieren agregar a si dos de los juezes de las leyes del Reyno, lo pudiesen hazer; y traxo tambien comission para que el Vizconde Fenton, Capitan de la Guarde, les diese asistencia y ayuda que le pidiesen, y executase lo que le dixesen.

Estos quatro Comisarios se juntaron con el Consejo el Domingo 25 de este, y estubieron toda la

Somerset, who was at that time Countess of Essex, had made the proposal to him, and had given him the poisonous powder in order that he might administer it.

The woman was immediately apprehended, and, although she denied, and has persisted in denying, the charge, the case was considered as proved against her by the other witnesses, with the good will they had, and from other circumstances; and the Chief Justice set off for Royston, which is more than thirty leagues from this, to give account of the matter to the King, who was there.

The Earl of Somerset, who was with the King, having received intelligence of what was passing, came here to speak to my Lord Coke, and, meeting him on the way, he begged him to return to London; but neither this nor what he told him of the state of the business could induce him to do so; and as it appeared to the Earl of Somerset that he was quite secure of the King, and that it was unworthy of him to make much of the business by going back with my Lord Coke, he told him to go to the King, and he himself went to London, saying that he was going to see his wife, and, although he started very early the next morning to repair to the King, and met my Lord Coke upon his return, they passed one another with nothing more than a mutual salute.

Immediately upon the arrival of my Lord Coke in London, he summoned a meeting of the Privy Council, of which he too is a member, and exhibited a commission which the King had given with respect to this affair to my Lord Coke, the Chanceller, Lord Zouch, and the Duke of Lennox, with power, if they wished it, to add two of the judges to their number; and he also brought a commission to Viscount Fenton, the Captain of the Guard, to give them aid and assistance if they required it, and to execute their orders.

These four Commissioners met the Council on Sunday the 1<sup>st</sup> of this month, and they remained in consideration of this matter the whole afternoon, doubting in what form they could proceed

tarde en este negocio, dudando de la forma como podrian proceder contra el Conde y Condesa de Somerset, y sobre lo mismo se tornaron a juntar el Martes en la tarde en casa del Chanciller.

El Conde de Somerset havia venido ya aqui, y tenido noticia de quan mal andaban las cosas, deseando recoger unos papeles que tenia en su poder la Madamasela Tornel, que estaba pressa en casa de un Jarife (que es como Alcayde de Corte) hizo el Conde de Somerset una cosa que ha parecido gran error; y fue que como Camarero Mayor y persona que por privado y favor particular del Rey tenia el sello secreto y la autoridad de dar en nombre del Rey los decretos, dio orden a su portero de camara en nombre del Rey para que fuese en casa del Jarife, donde estaba pressa la Tornel, y la tomase todos los papeles que le hallase, y se los traxese.

Fue el portero; pero el Xarife no quiso obedecer la orden sin dar quenta al Milor Cuque; autes detubo en su casa al portero, y se fue con la orden en busca del Justicia Mayor, y hallandole en la

against the Earl and Countess of Somerset, and upon the same matter they again met on Tuesday, in the afternoon, in the Chancellor's house.<sup>a</sup>

The Earl of Somerset having already come here, and having notice of the bad course which things were taking, desiring to recover some papers which were in the possession of Mrs. Turner, who was prisoner in the house of one of the Sheriffs (who is what an *Alcayde de Corte* is with us), he committed what has appeared to be a great error. This was, that having as Lord Chamberlain, and as the particular favourite and confidant of the King, the privy seal and authority to issue orders in the King's name, he ordered the porter of his chamber to go in the King's name to the Sheriff's house, where Mrs. Turner was imprisoned, and to take all the papers he should find there and to bring them to him.

The porter went. But the Sheriff was unwilling to obey the order without giving account to my Lord Coke. He therefore detained the porter in his house, and went with the order to look

<sup>a</sup> From this we may arrive with tolerable certainty at the date of the Commission. The Commission first met on Sunday, the 15th of October. If no time had been lost, and we are told that Coke assembled the Council immediately upon his return from Royston, he must have left Royston early on Saturday morning, and the Commission would have been signed on the evening of Friday 13th. This, too, accords with Somerset's probable movements. If we suppose him to have left Royston on the morning of the 13th, he would have gone back on the Saturday, and, hearing from the King of Coke's complaints of him, would hurry up to London on the Sunday to be ready to search for the papers of which he was in need on the Monday morning. Weldon, it will be remembered, makes the last parting on Friday, and as the language which he puts into Somerset's mouth about his intention to go to London for the sake of visiting his wife, coincides with that here ascribed to him when he met Coke, there can be little doubt that the affectionate leave-taking took place at the first parting on Friday. I cannot help suspecting that the words "I shall never see him more" were spoken on the Sunday, at the second parting. If so, the sting of Weldon's story is gone. It was at this visit of Coke to the King no doubt that he laid down the law in that curious form which appears from Sir George More's notes. Whatever may be thought of the doctrine, that the King had no right to know anything of the evidence in a case of blood, it is plain that Coke, knowing the King's extreme attachment to Somerset, was anxious even by inventing a little law on the spur of the moment to keep the investigation in the hands of the Commissioners.



junta en casa del Chanciller, dio a todos cuenta dello, exhibiendoles el decreto de letra y firma del Conde de Somerset y sellado con el sello del Rey, y viendo ellos que, no estando aqui el Rey, no podia ser aquello orden suya, se quedaron con el papel, y dixeron al Xarife que havia procedido bien en todo, y que al portero le tuviese presso.

Sabiendo esto el Conde de Somerset, les embio a dezir que pues no havian dexado cumplir la orden del Rey le volviesen el decreto. No se le quisieron volver, pero embiaronle a dezir que se los queria hablar o dezir algo, que podia venira dezillo alli a aquella junta, que le oyrian y le darian en ella el lugar que le tocaba per su antigüedad de Consejero, y calidad de su persona y officios. El les respondió que estaba ocupado, y que no podia yr, y mando prevenir luego coches para volverse al Rey, y sabiendo esto los de la junta se resolvieron en detenelle, embiandole orden que no saliese de su aposento, que es en Palacio, el mismo que solia tener la Princesa; y anteayer, Miercoles 28 deste le prendieron declaradamente, embiandole con guardas a casa del Dean de Guesmester; y a la Condesa, que esta preñada de nueve meses, la han prendido tambien con guardas en esta ciudad en su casa; cosa que ha asombrado a todos, pues los de una facion y de otra no creen lo que vean: y al Rey y al Conde de Somerset pienso que los sucede lo mismo, porque tengo por cierto que ni el uno ni el otro creyeron que esto podria ser como ha sido.

Y Homero, y los demas enemigos del Somerset bien entendian la voluntad que el Rey le tenia, y assi le han ydo engañando con acreditarle las conveniencias de hazer justicia, y los inconvenientes

for the Chief Justice, and finding him at the meeting at the Chancellor's house, he gave account of what had happened to all of them, showing them the order in the writing and with the signature of the Earl of Somerset, and sealed with the King's seal, and they seeing that, as the King was not here, it was impossible that this could be by his order, kept the paper, and told the Sheriff that he had done well in everything, and that he was to keep the porter in confinement.

The Earl of Somerset having been informed of this, sent to request them, as they had not allowed the King's order to be carried out, to return him the warrant. They refused to do so; but they sent to tell him that if he wished to speak to them, or to tell them anything, he might come and tell them there at their meeting, where they would listen to him, and give him the place which befitted him by his seniority as a councillor, and the quality of his person and offices. He replied that he was busy, and could not come; and immediately ordered coaches to go back to the King. As soon as the Commissioners heard of it, they determined to detain him, sending him an order not to leave his apartments, which were in the Palace, and were the same which the Princess used to occupy; and the day before yesterday, being Wednesday the  $\frac{1}{2}$ th of the present month, they openly arrested him, sending him under guard to the house of the Dean of Westminster; and they also arrested the Countess, who is in her ninth month of pregnancy, placing guards over her in her own house in this city; a thing which has astonished every one, since neither those who are of one faction nor the other can believe what they see; and I think that the same is the case with the King and the Earl of Somerset; for I hold it to be certain that neither the one nor the other believed that it would come to this.

And Homer and the other enemies of Somerset well knew the King's good will towards him, and so they have entrapped him by recommending to him the convenience of doing justice, and the



y peligros de embaraçarla, y el numero grande de enemigos que tenia el Conde de Somerset; con lo qual, y esta ultima resolucion han hecho el negocio incurabile en tan grande daño de l'autoridad del Rey, porque ha governado este negocio contra todos derechos, siendo (a lo que se tiene por cierto por todos los desapasionados) el Conde de Somerset sin culpa ni noticia deste caso que se le achaca, porque todo lo a que se puede estender la malicia es a que su muger, vista la autoridad que Overbury tenia con el Conde de Somerset, et que le estorbava el ayydar a que ella se descasase de con el Conde de Essex y se cassaria con el, ayudo o desseo su muerto. Pero el Conde de Somerset ni entonces era cassado con ella, ni havia menester matar a un pobre cavallero que estaba en la Torre, para no ser persuadido del, y demas desto. Aunque el Conde ha sido retirado y amigo de pocos, tambien ha sido templado im hazer offenzas ni agravios; pero no ha querido tomar consejo de los que le aconsejaban, bien pareciendole que no havia menester mas de obrar como el Rey le dezia, porque en esto entiendo que ha sido puntualissimo. De ayer aca no tiene ya un hombre por si, y comiençan a dezir que dio ponçona al Principe muerto, y otras cien cosas que le probaran, aunque no ayan sido. Y assi han muerto Reynas, y grandes, y privados, y otros machos ynjustamente.

V. E. se servira de dar quenta desto a su Mag<sup>d</sup> y yo la yre dande de lo demas que se fuere offreciendo. Dios guarde, &c.

Aora me dizen que estan componiendo en la Torre el aposento dondo murio Madama Arbela para meter en el al Conde de Somerset.

inconvenience and danger of throwing anything in its way, and by reminding him of the great number of Somerset's enemies; with which, and with the last resolution, they have made matters incurable, to the great injury of the King's service, because he has managed this affair contrary to all right, the Earl of Somerset being (as is certainly believed by all who are devoid of passion) without any fault, or knowledge of this matter of which he is accused; because all that malice can reach to is, that his wife, seeing the authority which Overbury had over the Earl of Somerset, and that he was throwing obstacles in the way of her divorce from the Earl of Essex and her marriage with Somerset, helped on or desired his death. But the Earl of Somerset was not at that time married to her, nor had he the means to kill a poor gentleman in the Tower, because he was not sure of him, and the rest of it. And although the Earl has been solitary, and a man with few friends, yet he has been moderate, without offending or injuring anyone. But he has not been willing to take counsel from those who offered it to him, thinking that all that was requisite for him was to do as the King told him, for in this I understand that he has been most punctual. Since yesterday he has not a man left to take his part; and they begin to say that he gave poison to the Prince who is dead, and a hundred other things which they will prove, though they never took place. And so they have killed queens, and great people, and private men, and many others unjustly.

Your Excellency will be good enough to give account of this to his Majesty, to whom I will send information of anything more that may happen. God preserve, &c.

P.S. They now tell me that they are preparing for the Earl of Somerset the room in the Tower in which Madam Arabella died.

## 2.

*A. Foscari and G. Barbarigo to the Doge of Venice.*

[Extract.]

October 28,  
November 7, 1615.

[Archives of Venice. Despacci. Inghilterra.]

Questo alcuni mesi sonno fu detto haverli appropriato quantità considerabile delle gioie della corona; et egli, per assicurarsi da questa et da ogn' altra colpa, supplico S. M<sup>ta</sup>. di un perdono assoluto, anche in quello che potesse toccare Maestà lesa, et ne ottene la parola, et sottoscrizione, mandato l' ordine al Gran Canciller; perchè vi metesse il gran sigillo, negò egli di farlo, et chiamati l' uno et l' altro alla prezenza del Rè ambi in ginocchi parlano; uno addasse gli inconvenienti di tal perdono grandissimi, et che in ogni caso, per mettervi il sigillo, era necessario che S. M<sup>ta</sup>. le concedesse un particolar perdono a lui per haverlo messo; che altrimenti, essendo questo contra li constitutioni del Regno, con reductione di Parlamento haverebbe perduto la vita; l' altro chiamando il Gran Canciller nemico, si estese in supplicatione; et mentre i maggiori del consiglio presenti stavano pendenti della bocca del Rè, disse sua Maestà ch' haveva amato Somerset, stimandolo di bontà, et così haverebbe continuato; et, voltatosi al Canciller et a gli altri, disse che non era in suo poter, ni in alcun di loro divertirlo di tal affetto, ma di Somerset solo, quando se ne fosse vero indegno; et commando al Cancillero, senz' altra replica di metter il sigillo, perchi lo voleva et commandava di autorità Regia; et se ne passo alle sue stanze. Ciò venuto alla notitia della Regina,

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Somerset some months ago was said to have appropriated a considerable quantity of the crown jewels, and he, to assure himself against this and every other charge, begged his Majesty for an absolute pardon, even to include high treason, and obtained the promise of it and the King's signature; but the order being sent to the Chancellor to put the great seal to it, he refused to do it, and both one and the other being called into the King's presence, both spoke upon their knees. One spoke at large on the very great inconveniences of such a pardon, and said that in any case if he was to put the seal to it it would be necessary for His Majesty to grant him a special pardon for having done so; and that otherwise, as it was against the constitution of the kingdom, when Parliament met again he should lose his life. The other, calling the Chancellor his enemy, made supplication at length; and whilst the principal councillors present remained in suspense upon the King's mouth, His Majesty said that he had loved Somerset, esteeming him for his goodness, and so he had continued to do. Then turning to the Chancellor and the rest, he said that it was not in his power nor in that of any of them to turn him away from his affection—Somerset alone could do it, if he became truly unworthy of it. He then commanded the Chancellor without any reply to put the seal to the pardon, for he willed it and commanded it of his royal authority; and then passed to his apartments. This coming to the Queen's knowledge, she immediately went

se ne andò ella immediata del suo palazzo a quello del Rè, et si adoperò in maniera che fece sospendere l'ordine dato di metter il sigillo al perdono; il qual doppo non pure non è stato posto, ma anco Somerset resta aggravato di altre, et particolarmente di haver fatto avvelenare un cavallier di gran stima, amico suo, che si trovava per comando del Rè in Torre.<sup>a</sup>

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from her own palace to the King's, and worked upon him so that she got the order suspended for putting the seal to the pardon. It has never since been done, but Somerset is now charged with other crimes, and especially of having caused to be poisoned a gentleman of great estimation, a friend of his own, who was by the King's orders in the Tower.<sup>a</sup>

<sup>a</sup> This was not the pardon which was read at Somerset's trial. That one, the second pardon, was, according to Cotton's evidence, prepared a little before Michaelmas, about a month after this scene in the Council. Of that pardon Somerset said in his defence: "And for the precedent of the largest pardon which I had from Sir Robert Cotton, it was upon this occasion Sir R. Cotton said, 'In respect you have received some disgrace in the opinion of the world, in having past that pardon which the last summer you desired, especially seeing there be many precedents of larger, I would have you now get one after the largest precedent, that so by that addition you may recover your honour.'" This is a very probable statement. Somerset is taxed with embezzlement. He obtains a pardon to cover such charges, and only misses forcing it past the great seal by the Queen's interference. He then determines by way of bravado to obtain a pardon "after the largest precedent" (whether at Cotton's suggestion or his own is quite immaterial), but is unable to carry it through, partly from Yelverton's objection to it, and still more because there was not time to fight the battle out before the charge of murder was raised against him. If this explanation is the true one, and if it can not be said to be established by legal evidence it is at least far more in accordance with the facts that are known than any other, the whole edifice which was built upon these pardons by the crown lawyers at the trial falls at once to the ground.

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## 3.

*Diego Sarmiento de Acuña to the Duke of Lerma.*

[Extract.]

November  $\frac{7}{17}$ , 1615.

[Archives of Simancas 2594, fol. 38.]

Muy encontrados y opuestos andan aqui todos los de palacio unos con otros, y el Conde de Somerset tiene muchos y declarados enemigos que tornan agora a hazer fuerza con el Rey, en que llame a Parlamento, persuadiendole que es solo esto el camino para remediar sus necessidades, y dificultandole los demas remedios; y los cuerdos tienen este por peligroso en el estado presente, y estando tan fresco lo sucedido en el Parlamento pasado.

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There is very much faction and opposition here between the courtiers, and the Earl of Somerset has many declared enemies, who are now again trying to drive the King to summon a Parliament, persuading him that this is the only way to remedy his necessities, and showing him how difficult other remedies will be. The prudent hold this to be dangerous in the present state of affairs, that which happened in the last Parliament being so recent.

## 4.

*Diego Sarmiento de Acuña to Philip III.*

[Extract.]

January  $\frac{20}{30}$ , 1616.

[Archives of Simancas 2595, fol. 23.]

Embio la Condesa con un cavallero que la guardo al Rey con recado, supplicandole humilissamente que la embiare dos personas de los de quien mas se fiase, a quien ella pudiese hablar y embiarle

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The Countess sent a gentleman who guarded her with a message to the King, supplicating him most humbly to send two persons from amongst those whom he trusted most, to whom she might

un recado. El Rey embio Martes a 12 deste al Vizconde Fenton y al Conde de Montgomery, ambos de su camara, para que le hablasen. Fueron, y he sabido que los hablo confessando llanamente la parte que havia tenido en dessear y ayudar a la muerte del Obarbury, como moça agravada y offendida que el hablaba indignissimamente de su persona; pero que el Conde de Somerset, que entonces aun no era su marido, ni lo havia sabido ni tenido parte en ello. Antes ella se guardava y recatava del en esto, porque le tenia por muy verdadero amigo del Obarbury, que esto era la verdad, aunque el aver sido ella sola en ello fuese mas culpa.<sup>a</sup>

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speak, and by whom she could send him a message. The King sent on Tuesday, the  $\frac{2}{14}$  of this month, Viscount Fenton and the Earl of Montgomery, both of his chamber, to speak to her. They went, and I have learned that she spoke to them, plainly confessing the part which she had taken in desiring and aiding the death of Overbury, as being a girl aggrieved and offended by the most unworthy things which he had said about her person; but that the Earl of Somerset, who at that time was not yet her husband, neither knew anything about it, nor took any part in it. She had rather guarded herself and kept the secret from him, because she held him to be a very true friend of Overbury. This was the truth, though it was the greater blame to her that she had been alone in the matter.<sup>a</sup>

<sup>a</sup> We learn from this for the first time the nature of this confession of the 1st of January. It is of course no evidence of any great weight in itself; but it is in accordance with many of the facts which are known. It is known now from papers which were apparently not in the hands of the prosecution at the trial [Harl. MSS. 7002, fol. 281] that there was an independent intrigue going on between Somerset and Overbury, in which, as Overbury at least believed, Somerset was to give Overbury medicine in order to make him ill, so as to excite the King's compassion. Now if Somerset wished to keep Overbury out of the way till the divorce case was at an end, from fear lest he should stop it by deposing to the fact of an adulterous connexion between his patron and the lady, whilst he wished him to leave the Tower finally under supposed obligation to him, it does not seem improbable that a strong-willed and vindictive woman, seeing tarts and jellies passing through her hands for purposes of correspondence, should take hold of the opportunity to poison the man whom she detested without telling Somerset anything about the matter. In his defence at the trial Somerset brought forward this very account of his actions, though only in a general way. He said that "true it is, he did plot with Northampton concerning Overbury how to imprison him . . .; but, he said, by this plot whereof Northampton wrote unto this prisoner, nothing was understood by this prisoner beyond the imprisonment of Overbury, and especially to make him unable to cross or any way hinder his intended marriage with the then Countess of Essex." . . . "If Northampton, the Lieutenant, Frances (for so he termed his wife), or any other of the executed persons during the time of his imprisonment consented in any other contrivance of his death, it was more than ever this prisoner knew or conceived to be plotted."

The obvious question upon this is, why Somerset, if he were innocent, did not go into further detail. It may very possibly however have been the case that, worn out as he was, he sbrunk from doing so for fear of the consequences which might be drawn by the lawyers from the full confession of his intrigues. Besides, if he ever thought of reading those letters, which have come down to us, in Court, he must have known that there were expressions in them relating to the King which would only exasperate James, and would cut himself off from the hope of pardon.

Que sobre todo se hechaba a los pies del Rey, pidiendo su gracia y misericordia con mucho dolor de aver offendido in esto a Dios y a el. Los cavalleros a quien ella dio este recado han hecho y hazen por ella muy buenos officios ; y he savido tambien que demas desto se han offrecido por su parte a Don Jorge Vilers el nuevo favorecido 20,000 libras, que son 80,000 ducados, porque alcance el pardon del Rey, y assi, con ser ella la culpada, se tiene mejor esperanza de su vida que de la del Conde; y una persona bien intelligente me dixo a noche que el mayor peligro que tiene la vida de la Condesa es que no saven como podra morir el Conde sin ella no muere, siendo la principal culpada; porque, en orden a que muera el Conde, han precipitado las muertes de los demas, que han ahorcado; y ay quien dixa que podra ser que con lo que ha traydo el Secretario del Embaxador Don Juan Digby se resuelvan en sacalle a juicio sin aguardar la venida del Embaxador; y por diferentes vias le confirmado que contra el Conde no se averigua cosa de sustancia en lo de la muerte del Ovarberi; y de la del Principe no ha permitido el Rey que se hable en ella; y todo lo demas probado hasta agora viene a parar en que dio un decreto antes que le prendiesen, para recojer unos papeles, diziendo que era orden del Rey sin haverla tenido para ello. Fue lo que causo su prision, y el aver entregado despues todos los papeles que tenia de importancia con algunas joyas a un amigo suyo, para que lo guardase que se coxieron. Y el Rey ha sentido infinito que se ayan visto

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For all this she threw herself at the feet of the King, begging for his grace and pity, with much grief at having in this offended God and him. The gentlemen to whom she gave this message have done and are doing good offices for her; and I have learned that besides this there have been offered on her part 20,000*l.*, that is to say 80,000 ducats, to Sir George Villiers the new favourite, that he may obtain her pardon from the King; and so, although she is the guilty person, there is more hope of her life than of that of the Earl; and a very intelligent person told me last night that the greatest danger to the life of the Countess arises from their not knowing how to put the Earl to death, if they save her alive, as she is the principal culprit; since, in order that the Earl may be put to death, they have hurried on the deaths of the remainder, whom they have executed; and some say that they will, upon the information brought by the secretary of the ambassador Sir John Digby, bring him to trial without waiting for the ambassador's arrival; and, by different ways, I have found confirmation of my belief that against the Earl nothing of importance can be proved in the matter of Overbury's death; and as to that of the Prince, the King has not allowed a word to be spoken about it; and every thing else that is proved up to this time comes to this, that he gave an order before he was arrested for the recovery of some papers, saying that it was by the King's directions, though he had never received them from him. This was that which caused his imprisonment, together with his having entrusted all the papers of importance which he had, together with some jewels, to a friend of his, to prevent them being found. And the King is very

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It must be remembered, however, that the difficulty is not got over by the assumption of Somerset's guilt. If the whole intrigue with Overbury was got up as a cloak for poisoning it must have been carefully prepared to be produced at the right time. True or false it would have accounted for many facts. A reason must be found, why did not Somerset bring it forward at length, even if he were guilty?



algunos papeles que havia suyos para el Conde de Somerset, y assi carga agora toda la yra sobre el Conde, y algunos papeles que se hallaron entre ellos de los que Don Juan Digby embio de ahy tocantes a confidentes, dize agora el Rey que el Conde no le mostro estos papeles por ser culpado en ellos el Conde de Nortanton y otros parientes de la Condesa su muger; y tambien me dizen que hallaron entre estos papeles, algunos del Conde de Nortanton para el Conde de Somerset con avisos y documentos santos y buenos en materia de la religion Catolica, de que induzen que el Conde de Somerset lo queria introducir en este Reyno con el casamiento deste Principe en España, o con qualquiera otro medio que pudiese.

Todos estos papeles y las joyas llevaron los Comisarios del Rey, y el embio de las joyas a la Regina una cadena de diamantes muy buena, y ella la embio al Don Jorge Villers, que la trae puesta de ordinario. Guarde Dios, &c.

Despues de escrita esenta he savido que ayer se vio privadamente por Juezes la causa del Conde y Condesa de Somerset, que es costumbre que se tiene aqui hazer esta diligencia en ausencia de los reos, para ver si aya materia para que mueran, antes que ellos y sus causas vean y lleven al tribunal publico; y dizenme que estos Juezes declararon que havia causa bastante en lo probado para ser condenados porque contra la Condesa constaba que era culpada de la muerte del Ovaberi, y contra el Conde indicios de que lo supo, y no lo denunció y declaro, y por esto dizen que es justo que muera. No se trato en esto juicio de ninguna otra cosa, y pienso que si esta los parece bastante

angry at the Commissioners seeing some papers of his which Somerset had, and so he now discharges all his anger upon the Earl; and he now says that the Earl never showed him some papers which were found amongst those which Sir John Digby sent from Spain<sup>a</sup>, and which mentioned my confidants, because the Earl of Northampton and other relations of the Countess his wife were inculpated by them; and I am also told that amongst those papers were found some from the Earl of Northampton written to the Earl of Somerset, containing good and holy advice, and other writings relating to the Catholic religion, to induce the Earl of Somerset to attempt to introduce it into this kingdom, together with the marriage of this Prince in Spain, or by any other means he could.

All these papers and jewels were taken by the Commissioners to the King, and he sent from the jewels a very good chain of diamonds to the Queen, and she sent it to Sir George Villiers, who wears it ordinarily. May God preserve, &c.

P.S.—Since writing this, I have learned that yesterday the case of the Earl and Countess of Somerset was privately examined by the Judges, it being customary here to do this in the absence of the accused to see whether there is matter against them sufficient to put them to death before they bring them and their case before the public tribunal; and I am told that these Judges will declare that, in what is proved, there is sufficient to condemn them, since against the Countess it is proved that she was guilty of the death of Overbury; and against the Earl there are proofs that he knew of it, and did not denounce or declare it, and they say that for that reason it is just that he suffer death. In that decision nothing else was mentioned, and I think that, if this seems to them

<sup>a</sup> This was a mistake, as appears from Digby's letter of the 3rd of April, 1616. State Papers. Spain.

no se valdran de mas; aunque se duda que los Pares del Reyno, que son los Condes y los Varones, que han de juzgarle en el juicio publico, tengan esto per sufficiente contra el Conde, y assi no esto aun señalado el dia de quando le llamaran para este juicio ni a la Condesa tan poco.

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enough, they will not make use of more; although it is doubted whether the Peers of the Realm, that is to say the Earls and Barons, who have to sit as judges in the public trial, will hold this to be sufficient against the Earl, and so the day is not yet appointed for his trial, and as little for that of the Countess.

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## 5.

*Diego Sarmiento de Acuña to Philip III.*

[Extract.]

May 31.  
June 10, 1616.

[Archives of Simancas 2595, fol. 99.]

El mismo dia del juicio del Conde de Somerset me envio dezir el Rey que se holgaria le viese en Greenwich. Estuba con el gran rato.

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The very day of the Earl of Somerset's trial the King sent to tell me that he would be glad if I would come to see him at Greenwich. I was a long time with him.<sup>a</sup>

<sup>a</sup> This would seem to show that too much must not be made of the King's excitement during the trial. The conversation turned upon the marriage.

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## 6.

*Diego Sarmiento de Acuña to Philip III.*

[Extract.]

May 31.  
June 10. 1616.

[Archives of Simancas 2595, fol. 101.]

En 25 del mes pasado de Mayo de cuenta a V. Mag<sup>d</sup> como estando señalado para aquel dia el sacar a juicio publico al Conde y Condesa de Somerset, y estando ellos y los Condes y Varones que los havian de juzgar prevenidos para esto acto, ovia venida orden del Rey que se suspendiese para los 2 deste.

Publicose que esta dilacion la avia causado que el Conde de Somerset avia embiado a dezir al Rey que queria descubrir y declarar grandes cosas, y la Reyna me lo dijo a mi asi el dia siguiente; pero havianla informada mal, porque lo cierto es que, pareciendoles a los comisariós que dizieron la avernacion que no havia suficientes pruebas para condenalle fueron de parecer que se suspendiese la causa del Conde para ver si se podian hallar mas pruebas, y que se hiziesen nuevas diligencias con el para que confesase sus culpas.

Y assi Viernes a 27 de Mayo a las 2 de la tarde escrivio el Rey al Duque de Lenox y al Varon de Hey, que estuvieron con la Condesa mas de una hora persuadiendole de nuevo que declarase lo que sabia contra su marido. Ella dixo que en la muerte del Cavallero Obarberi avia declarado y confesado su misma culpa, y aun encarecidola, para que tuviese mas en que obrar la piedad y clemencia del Rey; pero que del Conde ni en esto ni en otra cosa sabia que fuese culpado.

On the  $\frac{1}{2}$ th of May I gave an account to your Majesty that the public trial of the Earl and Countess of Somerset being appointed for that day, and the Earls and Barons, who were to try them, being summoned, an order had come from the King to postpone it to the

<sup>23rd of May</sup>  
<sup>2nd of June</sup>

It was given out that this postponement had been caused by a message sent by the Earl of Somerset to the King, to the effect that he wished to discover and declare great matters, and the Queen told me so the next day; however, she had been ill-informed, for the fact was, that the Commissioners who conducted the examination, not thinking that they had sufficient proofs to condemn the Earl, were of opinion that the trial should be postponed, to see if they could find fresh proofs, and that they might urge him again to confess his faults.

And so on Friday, the  $\frac{1}{2}$ th of May, at 2 o'clock in the afternoon, the King wrote to the Duke of Lennox and to Lord Hay, who were with the Countess more than an hour, persuading her afresh to declare what she knew against her husband. She said that with respect to Overbury's death, she had declared and confessed her own fault, and had even enhanced it, in order to have more to work upon the pity and clemency of the King; but that she did not know that the Earl was guilty of this, or of anything else.



Con esto pasaron el Duque y el Varon de Hey al parte donde en la misma Torre esta el Conde preso. Dixerón le la confesion de la Condesa su muger, añadiendo para movelle que, con aver confesado la Condesa su culpa llanamente, y puestose en las manos y misericordia del Rey, avia gauado mucho merito, y que assi tenia muy buenas esperanzas de su vidu, y que del Conde seria lo mismo; que como buenos Escoceses y sus amigos le aconsejaban que lo hiciese, porque en lo contrario aventuraba el l'alma, la hourra, y la vida.

El Conde dixo que se espantaba mucho que alabasen en aquel casso la clemencia del Rey con su muger, pues estaba mandada sacar a juicio, y que de lo quiere hazen con el mismo Conde, no podia dexar de espantarse, tambien pues despues de estar prevenida su causa, y su dia para llamar le a juicio publico le venian de nuevo a preguntar sus culpas y a aconsejalle que las confesase; que el no tenia que dezir sino quejar de ser tan mal tratado sin causa, y que assi esperaba de la prudencia del Rey, y de los quienes le aconsejaban, que no permitieran que se hiziese un horror tan grande, como llamarle a el a juicio, donde si se llevaban, pues savia a que era para morir alli, diria lo que supiese para morir alli, diria lo que supiese para su defensa, sin que el Rey se pudiese quejar, pues era la causa dello.

Dixole el Varon de Hey, que se reportase en aquel modo de hablar, y que el via en su semblante que era reo y culpado, y que le parecia que tenia en la boca, y aun en los labios la confesion de sus culpas; que las dixese, y tomase aquel consejo de un hombre que en aquel punto le hablaba como hermano y fiel amigo, aunque hasta alli confesaba que era quien mas malas hobras le avia hecho

After this the Duke and Lord Hay passed to the part of the same Tower in which the Earl was confined. They told him of the confession of the Countess his wife, adding, with the purpose of moving him, that by confessing her fault plainly and placing herself in the King's hands, she had gained much merit, and that thus she had good hope of her life; and that it would be the same with the Earl; that as good Scotchmen and friends to him, they counselled him to do as she had done, for if he did not, he would risk his soul, his honour, and his life.

The Earl said that he was much surprised that in this case they praised the King's clemency towards his wife, as she was to be sent to trial; and that he could not help being surprised at that which he wished to do with himself, especially as after his trial had been fixed, and the day for his being brought publicly into Court, they came to inquire into his faults afresh, and to counsel him to confess them. He had nothing to say, except that he complained that he had been so badly treated without any cause, and that he hoped so much from the prudence of the King and of those who counselled him, as that they would not permit so great an error to be committed as to bring him to trial, for if they took him there, since he knew that it would only be done that he might die there, he would say that which he knew in his own defence, without the King being able to complain of it, since he was the cause of it.

Lord Hay said to him that he should abstain from talking in this way, and that he saw in his face that he was guilty, and that he thought that he could see the confession of his faults in his mouth, and even in his lips. He had better speak it out, and take the advice of a man who, at that moment, was speaking to him as a brother and a faithful friend, though he acknowledged that formerly it had been he who had done him the worst turn to have him imprisoned, because he had

para su prision, porque el Conde le avia sido ingrato; pero que sabia que, confesando, y poniendose en las manos de su Rey, veria su gracia y misericordia.

El Conde le dixo que siempre le avia deseado de servir, y que le pesaba de no avello acertado a hazer como quisiera, y que sin embargo deste ni sabia ni esperaba que le habiese hecho ni havia malas obras, pero que quando asi fuese le avia hecho antes tantas buenas que le obligaban a tomar y seguir sus consejos como lo havia en lo possible; pero que la confesion de lo que no era ni sabia no podia estar en la boca ni en otra parte; con que, aviendo gastado en estas persuaciones mas de tres horas, se fueron sin sacar ningun fructo; y el Alcayde del Torre estuvo aquella misma noche con el Conde haziendo el mismo officio sin mas effecto.

El Jueves a 2 deste mes que era el dia señalado para el juicio se suspendio para el Viernes y Sabado siguiente, y el mismo Jueves volvio el Varon de Hay a persuader y aconsejar al Conde que confesase, y, visto que en esto no havia que esperar, le aconsejo con muy vivas razones la templanza y sufrimento sin exceder ni meterse, pues con aquello obligaria al Rey; asegurandole (segun me afirman), mucho deste, y del amor y buena voluntad que el Rey le tenia; tornandole a protestar que no haziendolo asi lo aventuraba todo.

\* \* \* \* \*

Con esto que fue todo lo que tuvo, el Doctor Francesco Bacon, Procurador y Fiscal General del

been ungrateful to him; yet he knew that, if he confessed and put himself into the hands of his King, he would obtain grace and mercy.

The Earl replied that he had always wished to serve him, and he regretted that he had not been successful in this as he had wished, but that, nevertheless, he did not know that he had done him a bad turn, nor did he expect that he would do so; but even if this were the case, he had before done him such good service, that he was bound to take his advice, and to follow it as far as was possible: but that a confession of that which had never been, and of which he knew nothing, could not be in his mouth nor anywhere else. After this, having spent more than three hours in attempting to persuade him without effect, they departed; and the Lieutenant of the Tower was with the Earl the same night trying, with no more effect, to accomplish the same object.

Thursday the <sup>23rd of May</sup><sub>2nd of June</sub> was the day appointed for the trial, but it was postponed to the Friday and Saturday following; and that same Thursday Lord Hay returned to persuade and advise the Earl to confess, and, seeing that there was no hope of that, counselled him, with very lively arguments, to moderation and patience, so as not to break bounds or to meddle with what did not concern him, since by this he would oblige the King; strongly assuring him (as I am told), of this, and of the King's affection and good will towards him; again assuring him that if he did not do this he would risk all.<sup>a</sup>

\* \* \* \* \*

After this [viz. the evidence] which was all that he had, Dr. Francis Bacon, the Attorney-

<sup>a</sup> There is little that is new in the long account of the two trials which follows. All there is, is contained in the extracts given.

Rey, hechura y confidentissimo amigo del Conde antes de la prision, le acuso en una larga oracion.

\* \* \* \* \*

Estavo el Conde en el juicio siempre en pie y descubierto y tan flaco y tan decaydo, y lo que dixo fue tan tibio y tan bajo que el mismo Fiscal de Rey pridio al Chanciller que para mayor justificacion de la causa y aver sido el Conde tan gran persona en este Reyno se le diese alli papel y tinta para si quisiese escriver algo.

Hizose assi, y el Conde escrivio mucho, pero no quiso leer sino muy poco y de muy poca sustancia; solo me dizen que a la postre en el punto general de su causa, hablo atinadamente, diziendo a los Juezes que considerasen que era ygnocente, y su compañero, Par del Reyno, y que condenalle por indicios tan flacos era condenarse ellos assimismos, y a sus sucessores para otros casos semejantes: y dizen me que despues quando le leyeron la sentencia condenandole a ahorcar beso la mano, y hizo una reverencia con el mismo semblante que pudo era hazello si tuviera de que estar muy agradecido, y el mismo si quito del cuello y de la pierna las insignias de la orden de San Jorge y de la Jarratera.

\* \* \* \* \*

En la execucion de las sentencias ay oy varios pareceres, porque la piedad de la causa de la Condesa y el favor que tiene da mucha esperanza de que no morira, y esta es la que ay para la vida del Conde; y por esto mismo lo que mas dificulta la de la Condesa, porque dizen muchos

General, a creature and most intimate friend of the Earl before his imprisonment, accused him in a long oration.

\* \* \* \* \*

During the trial the Earl stood the whole time and had his head uncovered, and what he said was so lukewarm and so dispirited, that even the Attorney-General asked the Chancellor to give him paper and ink if he wished to write anything, both for the better justification of the cause, and because he had been so great a personage in the realm.

This was done, and the Earl wrote much, but he would only read a very little of it, and that of very little substance, only they tell me that in the end, upon the general view of his case, he spoke to the point, telling the judges to consider that he was innocent, and their fellow as a peer of the realm, and that to condemn him upon such poor evidence was to condemn themselves and their successors in other cases of the like kind; and I am told that afterwards, when the sentence condemning him to be executed was read, he kissed his hand and made a reverence with a look such as he might have had if he had been much favoured; and that he himself took off from his neck and his leg the insignia of the Order of St. George and the Garter.

\* \* \* \* \*

As to the execution of the sentences there are now various opinions, because the pitifulness of the Countess's case and the favour she is in give great hope that her life will be spared; and it is this which is in favour of the life of the Earl; and for the same reason there arises a difficulty in the Countess's way, because many say that if she does not die, being the principal, it will not be right



que, no muriendo ella que es la principal, no sera razon que muera el Conde, condenado por solos indicios ; pero todavia se dudo suas de su vida que de la de la Condesa. Dizen que tambien lo detiene la consideracion de que un hombre de tantos grados muera ahorcado, y lo que se puede pensar de que muriendo tan publicamente diga algo que duela a alguno, y assi esta cerradissimo, y se entiende que se buscara traza para que haviendo de morir se degollado privadamente en la misma Torre, y me dizen que se han hecho ya sobre esto algunas proposiciones, y al mismo Alcayde de la Torre, diziendole que lo haya, y que despues se le dara perdon, y el no ha querido sin que se le de la orden para ello por escrito y primero.

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that the Earl should die, being condemned only on presumption ; nevertheless there is greater doubt of his life than of hers. They tell me that there is also an obstacle in the consideration of the impropriety of executing a man of such degree, and of the possibility that, if he dies in public, he may say something which will give pain to some one, and so the matter is kept very close; and it is understood that a proposal has been made that, as the Earl is to die, he should be executed privately within the walls of the Tower; and I am told that they have made on this subject some propositions, even to the Lieutenant of the Tower, telling him to do it, and that afterwards he shall have a pardon, and that he refused, unless he had the warrant for it in writing beforehand.

X.—*On the discovery of Sepulchral Remains at Veii and Præneste, by Padre RAFFAELE GARRUCCI; communicated and translated by W. M. WYLIE, Esq., M.A., F.S.A., in a Letter to A. W. Franks, Esq., Director.*

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Read May 31st, 1866.

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MY DEAR MR. FRANKS,

LAST winter, while at Rome, some sketches in the album of Padre Garrucci, of the Collegio Romano, made me acquainted with the discovery of certain archaic tombs at Palestrina, the ancient Præneste, which appeared to me to be of a very remarkable class.

On afterwards seeing the numerous reliques from these tombs, preserved in the rich collections of Signor Castellani and Prince Barberini, and ascertaining that these discoveries were for the most part, if not wholly, inedited, I felt it behoved me to attempt some record of them for the Society of Antiquaries. However I soon discovered the extreme difficulty of obtaining the precise information necessary for such a record, and that Dr. Mommsen, on attempting a notice of a former discovery at Palestrina, had fallen into error from the want of sufficient data.\* It then occurred to me that if I could prevail on that learned and accomplished antiquary Padre Garrucci to give us such a memoir from his own pen, it would be a valuable and acceptable acquisition. I am happy to say that Padre Garrucci most kindly undertook the task. I have now the pleasure of laying his paper on the table and, with it, the translation which I have executed to the best of my power. It commences with an account of the Padre's later researches in the Prænestine necropolis, on which occasion however he only found a number of stone tombs of a far later period than those which had attracted my notice, and probably those of the Latin or Sabine Æqui, among which only a single example of cremation occurs. These tombs are attributed to about the third century, B.C., and contain very little of interest. He then proceeds to give a very exact account of the ancient graves of Veii and Præneste.

Prince Barberini and Signor A. Castellani, into whose possession the reliques

\* Dissertazioni Archeologiche, di R. Garrucci, p. 154. Roma, 1864.



found in the tombs have come, liberally allowed me free access to their collections, and to have such drawings made as were required for illustration. For this purpose I selected objects of a rare and archaic character, and such as seemed the most likely to furnish some clue to the sources whence the earlier inhabitants of Latium derived their taste. Much remains that would have illustrated our subject still further, but from what we have before us will be observed that strongly pronounced combination of the Assyrian, Egyptian, and Greek styles, now generally imputed to a Phœnician source. The few Veii drawings are from reliques in Padre Garrucci's own possession.

The following paper then mainly treats of researches at Veii and Præneste. Incidental mention, by way of illustration, is also made of Cære, or Cervetri. Of the early Pelasgic occupation of Præneste and Agylla, converted afterwards into the Etruscan Cære, we have some historical notice. Veii, I believe, only becomes known to us in Etruscan times; but if sepulchral customs are of any avail in guiding us in the dark history of the past—and we believe them to avail much—then these discoveries would show that the same people that once held Præneste must also have held Veii, prior, in all appearance, to Etruscan occupation. It will be seen that the very remarkable mode of sepulture pursued at Veii was also pursued at Præneste, while it is totally at variance with all we know of that of the Etruscans. The reliques that have occurred in the sepulchres of both these cities are absolutely identical in character, and, as will be seen, have a very singular affinity with those discovered in the earliest tombs of Cære or Agylla. No doubt these reliques have, in part, a certain connection with Etruscan style, but the Etruscans were probably not a little indebted to preceding races for much of their arts and civilisation. It has been too prevalent a habit in Central Italy to give the name of Etruscan to whatever is decidedly not Roman, just as though the Etruscans were actually the *autochthones*, instead of being the successors of some races, while others were co-existent with them.

A circumstance that particularly struck me in these discoveries was the general use of iron, at such an early period, in connection with bronze and copper. Continental archæologists have long entertained a conviction of the early use of iron in Europe, or, as it is technically termed, of a first iron period. The present instance seems a very satisfactory confirmation of their views. It will be seen that Padre Garrucci makes continual mention of the occurrence of iron during his researches; and there may be seen in the Palazzo Barberini, beneath a mound of reliques from Palestrina that have never been arranged, a mass of iron tires from bronze wheels, iron spears, swords, knives, &c., which prove beyond all



contradiction the general use of the metal. Unfortunately these iron reliques are rapidly perishing from neglect.

The archaic tombs of Præneste and Veii prove moreover not merely the free use of iron, but also of ivory and amber, articles certainly not of necessity, but of luxury, even in the most palmy days of Rome. Now in connection with these facts is a matter too important to pass by without notice, though we can only briefly allude to it on the present occasion.

Just on the confines of Styria, among the mountain-forests and lakes of that beautiful part of Southern Germany, exists Hallstadt, a very primitive village of salt miners. Here, some time since, was discovered the necropolis of a tribe, affirmed to be Keltic, which, in remote times of uncertain history, owned and worked these salt mines.<sup>a</sup> In their graves, among a profusion of other reliques, we find the same rich combination of amber and ivory,<sup>b</sup> especially in the decoration of iron weapons, that occurs in so remarkable a degree at Veii and Præneste. The same unusual ornamental devices appear on the various reliques, while other Hallstadt remains, to which we can offer no parallel at Palestrina, correspond with those of other similar archaic Italic tombs, those of Vulci for instance.

It would be difficult to assign an ethnological cause for this manifest connection of the old Italic civilisation with the barbarism of Noricum. We can hardly conceive a colony, whether Umbrian, Hellenic, or Etruscan, quitting the sunny South to settle in a transalpine mountain nook, among races alien in language as in blood. It is surely to commerce that we must turn for a solution of the enigma. Salt mines are always mines of wealth, and wealth begets a taste for exotic luxuries, which commerce is seldom tardy in gratifying. We shall then perhaps not be far from the truth if we picture to ourselves the traders of Central Italy conducting their mule-trains, laden with the industrial products of the South, over the passes of the Carnic Alps to a sure market in the wilds of Noricum—to Hallstadt.

That Italic wares found their way over Germany at a very early period seems beyond question. Those rare and archaic Oscan bronzes, exhibiting groups of figures, of which examples exist in the British Museum,<sup>c</sup> and in my own possession, have a positive origin in South Italy; yet reliques very closely cognate have been found in the grave-hills of Styria and Mecklenberg.<sup>d</sup>

<sup>a</sup> See Simony, *Die Alterthümer vom Hallstätter Salzberg*. Vienna, 1851.

<sup>b</sup> *Die Alterthümer unserer heidnischen Vorzeit*, von Dr. L. Lindenschmit. Band ii. Heft i. pl. 5.

<sup>c</sup> *Archæologia*, vol. XXXVI. pl. xxvii. *Horæ Ferales*, p. 233, pl. xxxiv.

<sup>d</sup> *Archæologia*, vol. XXXVI. pl. xxvi. *Horæ Ferales*, pl. xxxiii.

Again, later works, of decided Etrusean art, occur not unfrequently in Germany, and more especially in the lands bordering on the Moselle and the Rhine.<sup>a</sup>

We need not now stop to inquire by what agencies these objects respectively reached the provinces of the Baltic in one direction, and of the Middle Rhine in the other. It would appear sufficiently evident that channels existed by which the products of Italian civilisation attained the limits of Germany at a period long anterior to Roman domination.

As Padre Garrucci gives his measures in Roman palms, it may be convenient to state that the Roman *palmo* is  $8\frac{3}{16}$  inches of our measure; and its subdivision, the *uncia*, is  $\frac{8}{16}$  of an inch. *Tufo* and *peperino*, of which some of the tombs of the later class were constructed, are the volcanic stones of the country; the former is a coarse material, but very durable, and more easily worked than the finer and compact *peperino*.

The *discerniculum* often mentioned in the following pages, was a long pointed implement of bronze or silver—not a hair-pin—used by the ladies for parting their hair. The handle is frequently decorated with some ornamental form. A *discerniculum*, from Præneste, in the possession of the Princess Barberini, is of silver, with a gold handle, and very long.

The *as rude* consisted of pieces of copper rods, or bars, of various sizes, which passed current for money according to weight. It seems to have continued in use, in country places, even after the introduction of a regular coinage.

Believe me most truly yours,

W. M. WYLIE.

#### EXCAVATIONS AT PRÆNESTE.—1862.

I have given some account of the necropolis of Præneste, in a notice of the excavations I conducted on the property of Prince Barberini,<sup>b</sup> in the vicinity of Palestrina, in 1863. I now propose giving an account of some previous excavations, in 1862, in the Vigna Velluti, on the right of the Mareigliano Road,<sup>c</sup> and more especially to describe the tombs formed beneath piles of stones which have been discovered in the burial places of Præneste and Veii.

<sup>a</sup> Museums of Treves, Mayence, Berlin, Munich, and Berne. Lindenschmit, *Alterthümer*, Band i. Heft. 2, pl. 3; Heft. 4, pl. 3; Heft. 7, pl. 3; Heft. 9, pl. 9. Band ii. Heft. 2, pl. 1, 2.

<sup>b</sup> *Dissertazioni Archeologiche*, vol. i. p. 148. Roma, 1864.

<sup>c</sup> *Ib.* pl. xii.

The scene of my operations was a plot of ground about one hundred Roman palms in breadth, by two hundred and fifty in length (in English measure about seventy feet by one hundred and seventy-five feet). As the surface furnished no clue whatever to the spot occupied by the interments, I had a trench opened twelve palms long by ninety-six broad. After passing through four palms of vegetable soil, where two examples of the Roman *as* were met with, one of them being a *sextans*, the other probably an *uncia*, and a *triens* with the letter Q, we came on a very compact mass of fragments of stones, pottery, and the like, three palms in depth, in which were skeletons interred beneath large tiles, with some vessels by them. When we had got down to seventeen palms from the surface, we discovered a cist of *tufo*,<sup>a</sup> and two tile-graves by it. The cist merely contained a skeleton. It seemed as though a second cist lay by the side of this, but on removing the cover we found the skeleton in a grave dug in the plain earth. By it lay an iron lance, and outside the grave, on the left, a piece of *æs rude*, with two small painted earthen vessels. A little above this tomb lay a skeleton interred in the plain earth, without any cist, and merely a piece of *æs rude* by it. These tombs came to light in the centre of the excavation of ninety-six palms, and we found on trial that the ground on either side had never been moved. I therefore directed a second cutting of twelve palms to be made in advance of all this width of ground, in order to discover on which side I should continue the excavations. However, finding nothing here, I advanced the cutting another twelve palms. Here were some tile-graves, and one of *tufo*, in which I merely found a skull, the rest of the skeleton having crumbled into dust. In a fourth cutting, at a depth of twenty palms, I found a covered cist, and a piece of *æs rude* in it by the skeleton. The disturbed state of the soil showed that tombs existed below, and at a depth of twenty-four palms we came on a cist without a cover, in which was a skeleton, with a spear-head and a piece of *æs rude*. As this cist was in the centre of the excavation, I tried the ground on either side. On the right it was intact; on the left, at a depth of ten palms, I discovered three cists of *tufo* containing skeletons only. Below these a narrow but deep trench had been formerly sunk, in which I found a skeleton in a reversed position, with a strigil and a long

<sup>a</sup> These *tufo* cists, or sarcophagi, are in themselves remarkable. They consist of rough blocks of *tufo*, coarsely chiselled, and measuring about nine palms in length, by six in width and depth. These were hollowed out to receive the body, and a covering, generally of one slab of the same stone, but sometimes of two pieces laid together, was placed over it. The few that occurred of *peperino*, being a finer material, were carefully squared and worked. Padre Garrucci is disposed to attribute these tombs to about the fifth century u. c.—W. M. W.



chain, both of copper, two small vessels, and the *æs rude*. Another portion of *æs rude* was found outside the third cist, and afterwards a skeleton lying on the ground, and only covered by tiles. In this part of the excavation we found a coin of the type with a lion's head on the reverse, and a youthful head on the obverse (the legend *Romano* is worn away), and a Roman *quadrans*. As soon as I had ascertained the certain indications of tombs on this side, I directed the cutting to be carried onwards, in the course of which an empty cist was found. The next day I directed the trench to be cut through the entire length of the ground, or about eighty palms further on, so that my excavation was carried on in the same direction on both sides at once. In the angle of this double cutting I found, at a depth of twelve palms below the surface, a quadrangular column of *peperino*, five palms in height and one square. At a depth of twenty palms was a tomb of tiles, with a small vessel by it. At the extremity of the longitudinal trench, on the left, was a *tuffo* cist at a depth of ten palms, and in the stratum of *débris* of various kinds I found the stamp of a maker, M·ORCIIVI, and two lamps with monograms N and B, and a third with letters formed of dots in relief. These go round the rim from left to right, and seem to read A·MAMI·A·L. The cognomen, on the contrary, is written from right to left and seems to read CINEROSI... Further on were some fragments of vessels, and terra-cotta tiles stamped with representations of Paris in a Phrygian dress, with a knee on the ground, shooting; Ariadne on the shore, waking from sleep; some fragments of the *as sextantarius*; some coins of Neapolis; and a small coin which has on the obverse a head covered with a Phrygian helm, and ROMA with a dog on the reverse. In the centre of the trench was a narrow but deep hollow, entirely filled with the bones of horses and men. At eight palms from the surface I found a skull, purposely entombed between four tiles, by which was a *triens*.

On the right of the lateral excavation, at the depth of ten palms, lay a skeleton on tiles covered with white stones. By it I found a coarse earthen vessel; a small brick, pierced at the top, after the manner of the truncated cones termed "weights," and seven round beads of coloured glass which must have formed a necklace. After this I found a *tuffo* cist with the *æs rude*, and a small vessel within it. In the long trench we found a *tuffo* cist containing a skeleton with a strigil that had been mended; and further on, another skeleton interred in the plain earth with a sort of inclosure of white stones round it. These stones come from the mountains of Palestrina, and were brought here either for the purpose of piling them above the bodies, or of forming an inclosure round them. The necro-

polis stands on a bed of *pozzolana*, and no stones of any kind, either *tufi* or *peperino*, are found there, the quarries being some miles distant. On the right side of this skeleton, surrounded with the white stones, I found a heap of bronze fibulæ of various sizes, to the number of eighty. Among these were at least five of amber, and the same number of iron, also five or six plain discs of copper, the largest of which was nearly seven Roman *oncie* (about five inches) in diameter. Not far off was an ossuary of *peperino* without a cover, containing burnt remains, and near it a *tufi* cist, within which, on the right of the skeleton, was a mirror and the *æs rude*. Sinking further, at a depth of fifteen palms, I found another *tufi* cist containing a mirror and *discerniculum* between two little vessels on the right of the skeleton. A third cist had within it two vessels, and on the outside was the *æs rude*.

After this I came on two of the tile-interments, with two common earthen vessels in them; then on an empty tomb of *peperino*, and, in the accumulated soil above it, a skeleton with the Roman uncial *as*.

As the excavation advanced I came on a necropolis, the southern boundary of which I perceived was indicated by the little *peperino* column mentioned above. Here the *tufi* cists abound, and I will proceed to describe them in their order of excavation.

In the lateral excavation, at seventeen palms from surface, I discovered a *tufi* cist, in which, at the right of the skeleton, was the *æs rude*, and at the feet, two little vessels, with a mirror between them. Close by were two more cists, from one of which I took two vessels and the *æs rude*; and from the second, an iron spear-head, two strigils, one of iron and the other of bronze, and a portion apparently of an iron saw. Above this cist was a tile-tomb covered in like a sloping roof. The ground above had been trodden hard, and at eight palms from the surface, close by, I found a cist resting on two palms of moved soil with a trodden layer of chalk above it; this contained a spear-head, ten *astragali*, and thirty shells by the side of the skeleton. There was further a copper ring, and by the right side of the head some small pieces of metal stuck together with iron-rust, consisting of two fragments of *æs rude*, a bronze coin of Neapolis, bearing the half bull with human head, and on the reverse the head of Apollo, and part of the legend; also an iron ring with two fragments of copper *bullæ*, and two more of uncertain objects.

In the long trench, at eighteen palms from the surface, were two cists. One was empty, and the other contained a spear-head. Near these was a tile-tomb. In the lateral cutting I found three cists. The first contained two small vessels, a

mirror, and the piece of *æs rude*. Beneath this cist was a vase about two palms in height. The second cist contained a spear-head and two strigils of bronze, and in the third was a similar strigil, and the bronze neck of a balsam or oil vessel which must have been of leather.\* By the side of the second cist, and underneath the first, at a depth of from eight to ten palms from the surface, was another one containing a mirror, a strigil that had been repaired, two small vessels, and the *æs rude*. By it was a tile-tomb with a pike or *verutum* of iron. Below the cist, found, as I have stated, at eight or ten palms deep, was another in which were two small vessels, a mirror, a shell on the right side, a *discerniculum*, and an armilla on the left; also two coloured glass beads, a silver ring, and the piece of *æs rude*. Outside was a skeleton buried in the earth, which had two small vessels by it, one of which was broken.

In the course of my excavation on the day following, I came on three cists in the long trench. Two of these had no covers, the third contained two small vessels, one of which, a coarse one, lay on the right side, the other, a painted vase, on the left of the skeleton; there was also a piece of amber pierced at the upper end. In the cross trench, fifteen palms deep, I found a cist, the left corner of which had been broken, and repaired with a tile. I imagine this to have occurred when they dug places for other cists, three of which I found by this one on the same day. On entering this broken cist, I could just see the faint white trace of the decayed remains which had once been adorned with a necklace of most beautiful gold beads, between which were twelve stars, also of gold. There were also some coloured glass pastes, but quite perished; a pierced amber ornament representing the head of Silenus, of archaic form, with pointed ears like those of a horse. On the left of the skeleton was an *alabastron*, and the bronze neck of another balsam vessel, the body of which had been of leather, and the form still remained, though the leather had perished. On the right side was a copper ear-pick and a piece of *æs rude*, another piece of which lay between the legs. On the left foot was an iron ring, and between the feet there must have been a leather vessel attached to a plate of very thin copper that served for a base. Three painted vases, in a good style of art, and not of the pottery of the country, were at the feet of the skeleton, but two of them were broken.

From another cist by the side of this I got two small vessels, a copper ring, and a nail, found on the breast of the skeleton with some dark substance, pro-

\* See Plate III. fig. 2 for an illustration of a balsamario taken from a very perfect example in the Barberini Collection.



bably leather, adhering to it. Close to this cist was a skeleton interred in the earth with an elegant wine pitcher of white ware by its side, and a bellied vessel with two handles, within which was a fragment of another vessel and a piece of *æs rude*. Over this, by the side of the cist with the golden necklace described above, was another with a skeleton only, and by its side a skeleton in a tile-grave, near which were two small vessels. On the left side of the cist with the gold necklace, and almost at the same level, I found another with a vase on which an owl was painted.

Meanwhile, I obtained a fine piece of the *æs rude*, and two vessels from a cist in the long trench.

The day after, in the transverse trench, I found a cist with a strigil doubled up on the thigh-bone of the skeleton, and a piece of *æs rude*; by the head were two vessels, a mirror, and one of the truncated cones of terra cotta we are in the habit of calling "weights." The first cist in the long trench yielded two vessels, and a strigil. The second had a vessel outside it, and within, a strigil, a pike (*verutum*), and the *æs rude*. Another, which I opened in the cross trench, had an iron strigil on the left of the body, and a small vessel.

During the following days I carried the long trench on to the extremity of the ground, where I found a little pillar, four palms in height, which evidently was the terminus of this cemetery on the north side. Close to this, at a depth of thirteen palms, was a cist of *peperino*, which was quite an exceptional circumstance, as all the rest were of *tufo*. In it, by the left side of the body, was a spear-head, an iron strigil, and the bronze neck of a leathern balsam vessel. Under this, again, at a depth of seventeen palms, I opened another *tufo* cist, wherein, at the feet of the skeleton, was a spear-head, and by the left hand a plummet, and the *æs rude* between the legs. In the cross cut, at a depth of seventeen palms, was a very short cist, into which a body had been crammed by resting its back against the side, and bending the knees up. This skeleton was well preserved.

On the following day, in the long trench, at a depth of ten palms, we found, in a cist, a small vessel at the feet of the skeleton, and a truncated cone or weight. By this was another *tufo* cist, with only the *æs rude* in it. Beneath, however, and fifteen palms deep, was a tile-grave, with the *æs rude* by the body. Further on we met with a *tufo* cist at ten palms' depth, in which were two small vessels at the feet of the skeleton, a mirror, and two pieces of *æs rude* about the middle, and, on the right of the head, a spear, with a fractured painted vase not of a local manufacture. In the cross-cut, in the upper stratum of the usual *débris*, I found a *triens*, bearing on the obverse an open hand, and a thunderbolt on the

reverse. We then came on a ditch filled with the bones of men and animals, near which, at twenty palms deep, was a cist, with a vessel on which a swan was painted; and another cist, at nineteen palms, in which was a shell, a rude vessel, and two beads of coloured glass.

The latter part of the excavations revealed a cist at the depth of fifteen palms, and within it a pike, and a strigil by the left hand. Another cist, only twelve palms deep, had a small vessel, the *æs rude*, and a bead of coloured glass. In a third, at a depth of sixteen palms, I found two beads of coloured glass, the *æs rude*, and a spear-head. The fourth contained a fragment of iron, two coloured glass beads, and a little copper *bullæ*, in which, on opening it, I found a small dried stalk of some plant.

The last four cists I opened were not richer than the others; in fact two of them merely contained skeletons. In the third were three little vessels and the *æs rude*, and in the last two small vessels, a mirror, and the *æs rude*.

#### TOMBS AT VEII AND PRÆNESTE BENEATH HEAPS OF STONES.

How completely this exact narrative of my excavations in the Vigna Velluti corroborates my refutation of Mommsen's assertions will be sufficiently manifest to every one who has read my first volume of "*Dissertazioni Archeologiche*" (p. 154); so I need not refer again to the subject. I shall therefore proceed to give an account of a fresh description of interments, to which, indeed, I have already alluded in my former work. It has become the more important to render this known in detail, as I have since witnessed a similar mode of interment at Veii.

There was, then, a time when it was the custom to deposit the dead in a deep grave, and to deck this their last home with a variety of valuable objects. This done, they filled up the whole of the hollowed space to the very edge with huge rough stones, the weight of which crushed the body, and the objects deposited with it. However strange such a fashion of burial may appear, the repeated instances of it we now have leave no doubt on the matter. It will, in particular, be worth while to relate the discovery of two tombs at Veii, as I was present at the time.

As the excavators were searching for tombs on the summit of a hillock there, after removing a little soil, they discovered that the *tufo* rock had been cut, which was a certain indication of a tomb. This time, however, they had not before them one of the usual passages which lead to the gate of the *hypogeum*, but a quadrangular space open to the sky, and twenty palms in depth. This was filled with fragments of rock, which they set about removing with care, not

knowing what might possibly be met with below. Proceeding in this manner, they came on a sort of recess cut in the right wall of this square space, in which they found a large bronze basin with hooked handles, and three ribbed bowls (Pl. III. fig. 1) of elegant form. There was also a double plate of copper, the surface of which was divided into squares by lines and a double raised beaded pattern, the centre of each square compartment being filled in with concentric circles. This plate was edged by two copper rods, one of these being flat, with a row of bronze birds fixed on it,<sup>a</sup> and the other round, from which small ornamental plates of copper are suspended by small rings. This object (Pl. IV. fig. 2) had four wheels, and in its centre was a basin over which passed a broad strip of metal with a sunken hollow in it, answering to the basin below. It probably was used as an incense burner, and corresponds with a similar relique from Cervetri,<sup>b</sup> now in the Vatican Museum, and another in the Barberini Palace, found at Præneste.

There were further three objects composed of copper rods bound together in threes or fours by transverse rods, ending in volutes with rings, to attach a small chain or strap for carrying them by. These must have served for incense burners. (Pl. III. fig. 5.) Also, a small bronze barrel, a pipe with a shifting handle, and a small tripod.

There was also an ivory vessel, encircled at top and bottom by a copper hoop, and charmingly ornamented around by vertical strips of copper, the intervals between these being filled up with amber veneered on the ivory beneath. (Pl. III. fig. 4.)

In the left wall was a vaulted niche, in which a wooden box was found, bound with iron, containing six little vessels of fine white earth, with no other ornamentation than wavy lines marked on them before burning. In the centre of the floor lay a skeleton with a spindle and whirl of amber by its side,<sup>c</sup> (Pl. V. fig. 3) and two little sticks of amber, with slight copper rods passing through them, and covered with leaf gold, which possibly may have served for a distaff; also, a silver plate. About the skeleton were scattered a great quantity of tiny rings of yellow and blue enamel, similar to those so frequently met with on the breasts of Egyptian mummies.

From all these circumstances we may infer that a woman lay interred here, and the more so from the objects I am about to describe discovered in excavating the adjoining tomb, which was also filled with stones. Here, then, after clearing a few palms in depth, two repositories appeared cut in the wall on the right and

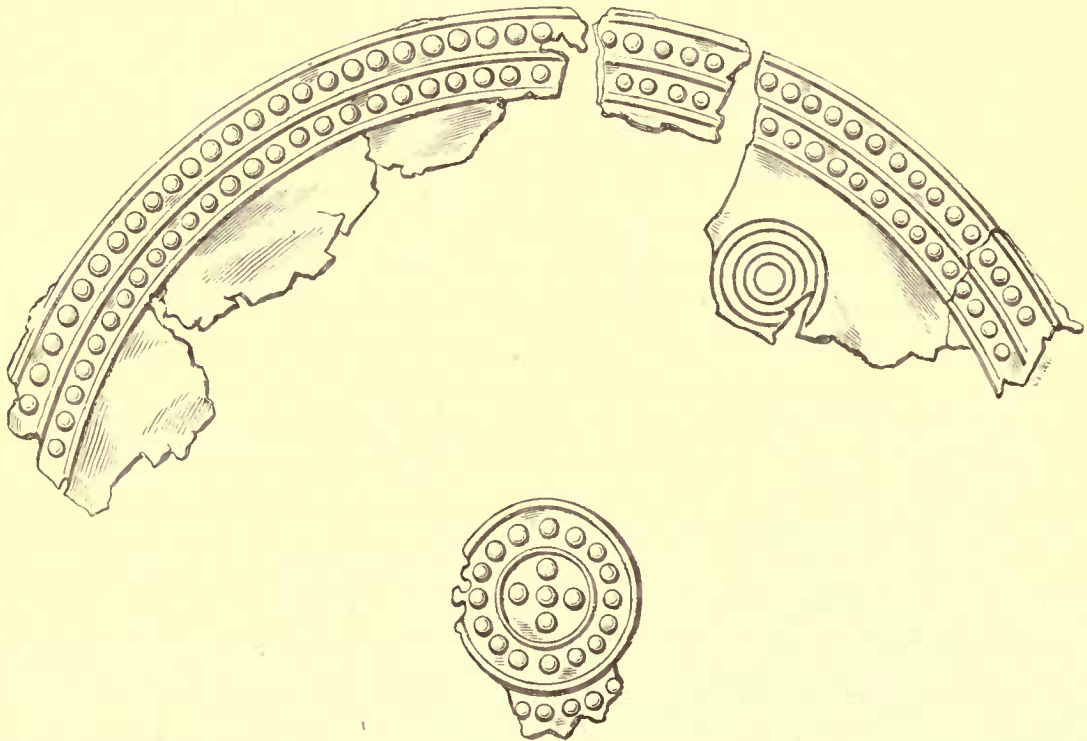
<sup>a</sup> Compare *Iliad*, xi. 633, for these bird forms.

<sup>b</sup> Canina, *Etruria Marittima*, pl. lviii. fig. 1, 2.

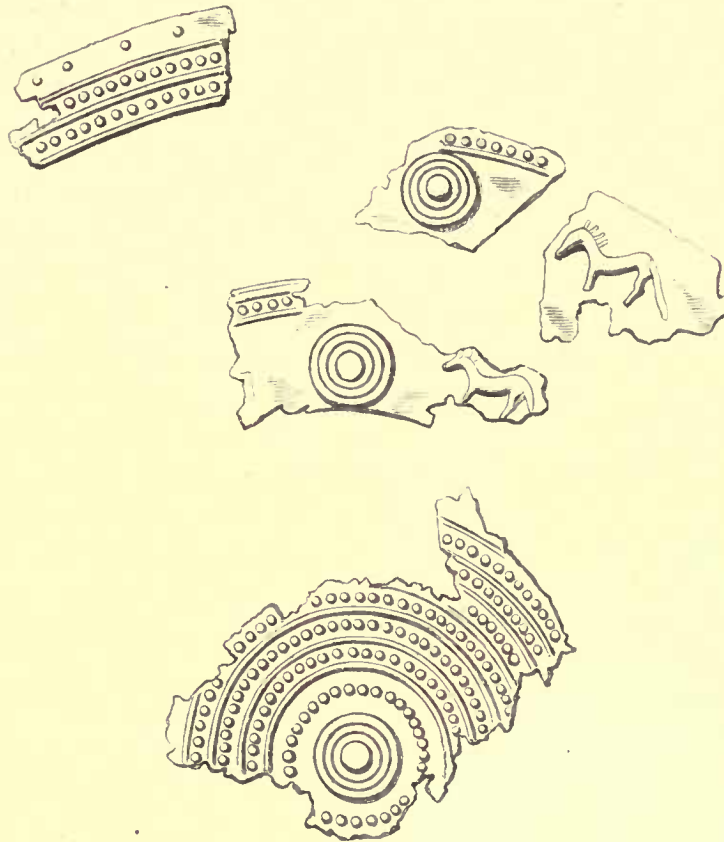
<sup>c</sup> Compare Herodotus, iv. c. 162.



left, and in them bronze vessels covered with patina. In the midst of the excavation, among the stones, were two bronze horse-bits, which must have belonged to the car found here afterwards. The excavation had advanced thus far when I was taken to see it. On descending into the hollow I perceived two pieces of iron projecting from the left side. I got this spot cleared and drew out about the half of a thick tire of iron, with some nails and plates of pure copper, which showed a car had been placed here, in connexion with which were doubtless the just-mentioned bronze horse-bits. To the pole of this car we may also refer six plates and nails of copper which had been employed to strengthen it. The lateral recesses contained a great number of bronze articles, but entirely broken into fragments beneath the weight of the superincumbent stones. Nevertheless there is sufficient evidence for asserting that, besides a bronze jug (Pl. III. fig. 3) and several other vessels, there were parts of two bronze shields, the ornamentation of which perfectly resembles that on the shields found in the Prænestine tomb, which are now in the possession of Signor A. Castellani. There is in particular the form of a quadruped, in raised work, which exactly corresponds with the design of one of the shields in question. (Pl. IX. fig. 1.) I am also of opinion that the helmet was here, and to this, I conjecture, belonged a double strip of thin



BRONZE SHIELD FROM VEII. SCALE  $\frac{1}{2}$  LINEAR.



FRAGMENTS OF BRONZE SHIELD FROM VEII. SCALE  $\frac{1}{2}$  LINEAR.

bronze, with a raised ribbed and beaded ornamentation of the form of those exceedingly lofty crests on the helmets of Mars in the ancient Umbrian style. (Pl. IV. fig. 1.)

After three days the floor was reached, whereon lay a skeleton with two iron daggers,<sup>a</sup> one on either side, in their ivory sheaths inlaid with small squares of amber, and handles also adorned with strips of amber. (Pl. VI. fig. 2.) There were also two bronze chased fibulæ, and a spear-head of bronze with wide blade; and probably some bronze draughtsmen, flat on one side, and round on the other, only one of which was dug out of the mass of mud which enveloped all the objects on the floor.<sup>b</sup>

From the tombs of Veii, I shall now proceed to describe those of Præneste,

<sup>a</sup> An iron dagger was also found in the Regolini-Galassi tomb at Cervetri. *Monumenti de Cære Antica*, by Cav. L. Grifi. Roma, 1841, pl. v. fig. 3.

<sup>b</sup> These small hemispherical objects are called *pessuli* by Braun (*Bull. Inst.* 1865, p. 217), and *calculi*, or *latrunculi*, by Minervini (*Bull. Arch. Napol.* 1853, p. 192, tav. viii. f. 5-6), who has published three of stone, and of different colours, found in a tomb at Cumæ.

one of which was discovered on the estate of Prince Barberini, and the other on some property of the Chapter of Palestrina, on a branch of the Via Labicana, just before it falls into the Via Prænestina.<sup>a</sup> Here, though the various reliques found beneath a heap of stones were broken, yet they still retained some form. For a right apprehension of what remains, and the mode of restoring it, we can avail ourselves of the discovery on the Chapter property. Fortunately these reliques have come into the possession of Signor Augusto Castellani, who has succeeded, with great ability and care, in restoring almost the whole. The first tomb was discovered in 1855 near the Casina Ceceoni, at a place called La Colombella.<sup>b</sup> It will be understood that at Palestrina sepulchres of this kind, instead of being rooms cut in the *tufo* rock, as at Veii, are open trenches dug in the solid earth. Stones are not found here, and consequently, as they are required for filling up the interments, they have been brought down from the mountain, on the slope of which the city of Palestrina is built. They are of white limestone, rough as when split from the rock, without a trace of lime having been used for binding them together. From beneath them were taken the rich reliques now preserved by Prince Barberini, an account of which I will proceed to give.



PANTHER'S HEAD OF BRONZE, PRÆNESTE. SCALE  $\frac{1}{2}$ .

1. There was first a large circular bronze vessel with three heads of animals for handles, two representing panther's heads and one a griffin's, or horned snake's; the style being archaic. It has been fancied that these heads were turned inwards facing each other; on the contrary, they protrude from the body of the vessel, with the faces turned downwards.

2. A vessel of thin sheet copper (Pl. VI. fig. 1) in form of a reversed truncated cone, on which are represented, in low relief, two rows of animals, both real and fabulous. In the centre of the upper row is the figure of a woman, with a cloth drawn tight round the loins, sitting on a horse. She holds the reins in the left hand, while the right is extended, and holding some re-curved implement. Be-

Garrucci, Dissertaz. Arch. pl. xii.

<sup>b</sup> Ib.

<sup>c</sup> Compare the account given by Herodotus of similar Grecian works of a far later period, as the copper or



fore her is a stag, and a centaur with human figure and the body of a horse joined on to his back, as in the most archaic forms. This figure is similarly girt about with a tight cloth, and holds a bough in the right hand. Then follows a sphinx, between the fore-legs of which hangs an apron. Behind the horse are a dog, a large antelope, and a chimæra. In the lower row, just below the horse, are two large cocks, without crests or wattles; then on the right a leopard and a bull; on the left a roebuck and a griffin. Below is an ornamentation of bean-leaves. Traces exist of the handle, which seems to have been of iron.

3. A bronze bowl and iron tripod, the feet of which are of bronze, and represent those of a goat.

4. A little car on four wheels, with a brazier, over which passes a sheet of copper hollowed into the form of a cup, in which possibly perfumes were burned. This resembles the vessel found at Veii, described above (Pl. IV. fig. 2), and another found in the Regolini-Galassi tomb at Cervetri,<sup>a</sup> now in the Etruscan Museum at the Vatican.

5. A circular bronze vessel supported by three fauns, of the rudest workmanship.

6. Other bronze vessels and jugs of elegant form, some of which were ribbed.

7. Silver cup with bas-reliefs of animals.

8. Silver handle of a silver cist, only a few fragments of which were found.

A similar handle, with the cist itself, was found in another excavation which I will proceed to describe.

1. A gold fibula, broken into two pieces, with four rows of small sphinxes. Its form can be perfectly made out by comparing it with a similar one ornamented with sixteen sphinxes found by the Sigg. Calabresi, at Cervetri.<sup>b</sup> (Pl. VII. fig. 3.)

2. Golden tag, of a belt probably, with three heads of lions, and three harpies in filigree work.

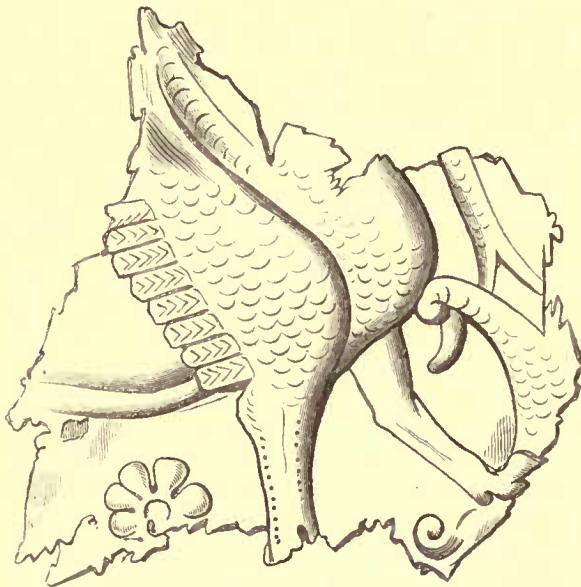
bronze bowl—*κρητῆρα χάλκεον*—sent by the Lacedæmonians to Cræsus. (Clio. 70.) He describes it as covered with a variety of figures on the outside—*ζωδίων τε ἔξωθεν*. On such a vast surface engraving would be lost, so we may conceive the ornamentation was in embossed or *repoussé* work, as is the case with this Præneste vessel. Again, Herodotus describes the votive bowl of the Samians as fashioned like an Argolic bowl, with projecting griffin's heads around it—*γρυπῶν κεφαλὰὶ πρόκροσσοι*. (Melp. 152.) Now these may have been a number of the very same projecting handles (*protomi*) in some similar zoomorphic fashion. Compare the bowl in the Vatican Museum from the great Regolini-Galassi tomb at Cære, in Etruria Marittima, pl. 57. The Grecian taste in such forms is further exemplified in the mention of the house of Seylas, round which were griffins and sphinxes of white marble. (Melp. 79.)—W. M. W.

<sup>a</sup> Canina, Etruria Marittima, pl. lviii. figs. 1 2.

<sup>b</sup> It should be mentioned that the tomb at Cervetri contained merely this beautiful work of art, and

3. Gold point, probably of a sceptre, with filigree ornamentation.
4. Six gold pins.
5. Large armilla of gold, with four rows of sphinxes, and its clasp to fix it on the arm.
6. Close to this were found two bracelets of the same size, of purple stuff worked on strips of gold, and with a row of little golden birds pendant from it.
7. A lion couchant, in ivory. On its back reclines a male figure with hair standing upright, and extended arms and legs. There are some traces of another human figure. (Pl. V. fig. 2.)
8. Three fore-arms and hands of ivory, with an ornamentation in relief, of four successive circles of lions and bulls. Between the animals are palm and other trees. (Pl. VIII. fig. 1, 2.)
9. A fractured conical ivory cup, perhaps the top of a distaff, with a double row, in relief, of winged lions going to the left. (Pl. VIII. fig. 3.)
10. Two horse's heads, lions couchant, and five statuettes in human form, perhaps the ends of *discernicula* or similar objects.

The objects I am about to mention have not hitherto been kept distinct from the preceding, but I am of opinion that the husband lay buried with his wife in this grave, and that the following reliques were his.



PART OF A BAS-RELIEF, WINGED GRIFFIN.  
PRÆNESTE. SCALE  $\frac{1}{2}$ .

These objects then consist of fragments of shields of thin bronze; some remains of a car; and a large bronze bowl with raised ornamentation of figures of winged griffins, and twining shrubs among them. On the ground are rows of flowers. I cannot learn that any spears, swords, or poignards were found, but such probably was the case, though all traces are now lost. In the Barberini collection are poignards, and long iron swords (Pl. IX. fig. 2), with their hilts covered with amber, but it is not known in which excavation they were found.

three small terra-cotta figures of the most archaic form and workmanship. These represent females in a

I must now give some account of the reliques found in a similar tomb close by, which also were crushed by the white stones. This tomb was excavated on the right of the same branch of the Via Labicana, about a mile before it falls into the Via Prænestina, and the reliques are now in Signor Castellani's collection.

The excavators appear to have kept no account of the iron things that were found, but solely of the gold and silver, bronze, copper, and amber.

1. Two bronze bowls, and a vessel of very singular form with handles. The latter is of considerable size, and formed of plates of copper; from the body of the vessel a conical neck rises abruptly, and from the bands, which surround both neck and body, project pointed studs.

2. Three shields of thin bronze with raised ornamentation, and rude forms of animals. (Pl. IX. fig. 1.)

3. The open silver ornamentation of a *situla* (Pl. X.) divided into several bands or stories. The *situla* was probably of wood, encircled by this silver work. On the base is an ornamentation of palm and bean leaves; on the story above are figured bulls turned to the left, in a very archaic style; on the third are portrayed winged griffins turned in contrary directions; on the fourth are sphinxes in a sitting posture. On the body of this *situla* are affixed two plates that terminate in little hooks to receive the handle. On these are represented in vertical order four little winged forms with wide tunics, and over them a head terminating below in volutes and above in the aforesaid hooks into which the ring of the handle enters. The cover of the *situla* (Pl. XI. fig. 1) has a beautiful open flower in its centre, with three rows of petals, and around it volutes ornamented with palm and bean leaves. The form of the *situla* restored is shown in Pl. XI. fig. 2.

4. About eighty pieces belonging to necklaces and bracelets of silver in the form of acorns with rings, &c. through which passed the cord that held them together. (Pl. VIII. figs. 4, 5, and Pl. XIII. figs. 2, 3.)

These necklaces and bracelets correspond with those engraved on the cists and mirrors, as also on a bronze, in the Kircherian Museum of the Collegio Romano.

5. Round discs of silver with hooks to attach them to the necklaces and bracelets. These are occasionally plain, but for the most part have an ornamentation of flowers chased in the centre, and triangles round the edge. (Pl. XII. fig. 2.)

crouching form, and clad in an ample kind of cloak, chequered like a plaid. On the shoulders are brooches, resembling that before us in shape, but without the raised ornamental work. The Cervetri fibula, now in the possession of Sig. Castellani, is of electrum, rather than gold, coated over lead. This branch of the goldsmiths' art was well known to the Greeks. Compare *Odyssey*, vi. 232. A fibula of the same form is in the Blacas Collection, stated to have been found in the Campagna of Rome.—W. M. W.



6. Plates of silver with hooks, straight on one side and curved on the other. These are edged by a filigree ornamentation and a series of triangles. In their centre on the straight side is a row of circles or little wheels, and on the curved side a frog swimming in the midst of the waters, which are represented by zig-zag lines, as in the Egyptian hieroglyphics. (Pl. XII. fig. 2.)

7. Amber in various forms and pierced at the upper end for necklaces.

8. A considerable quantity of leaf-gold used for banding the fibulæ, and the little rods of amber resembling those found in the tombs of Veii.

9. Two cups and a vase of silver. One of these cups (Pl. XII. fig. 1) is covered with rows of little raised beads, and the circular inside centre of the base is divided into two parts. In the upper part, from the middle of a kind of veil, rises the head of Isis bearing the *ovum primigenium*. Behind her is seen the head and half of the wings of a vulture, on the head of which in like manner reposes an egg, and beneath rises the *uræus*. Before the goddess is the sceptre. The lower half is edged by two bands—an external one of ovals, and an inside one of vandykes.

10. Several small human heads in gold, terminating in bivalve shells, with rings at the points for stringing on a necklace.

11. Two sleeping lions carved in ivory, resembling a similar relique in the Barberini collection, mentioned at page 16.<sup>a</sup> (Pl. V. fig. 1.)

Signor Augusto Castellani, who purchased these reliques, and has had them restored in the most careful and admirable manner, is entitled to the fullest gratitude of all who take an interest in the arts, and in archæology. We are, moreover, not only indebted to him for the preservation of these reliques, but also for that of the further ones I am going on to describe.

These were found at Palestrina, in the last excavation made by Pier Luigi Galeassi on the property behind the little church of S. Rocco, and which may be considered a continuation of my researches in the Vigna Velluti, inasmuch as the same *tufo* tombs, containing similar scanty reliques, were also found here. Among these, however, he was fortunate in discovering one of the singular tombs filled with masses of rock, as before described.

1. When, then, he had got down to the soil on which the skeleton lay, he found two gold chased bracelets divided into six compartments, and above each

<sup>a</sup> Both these ivory carvings are fractured at either end, and would seem to have formed part of some article of ornament or furniture, which was totally destroyed by the stones. A similar design occurs on the ornamentation of a bronze tripod of a later period, found in a tomb at Vulci (Etruria Maritt. pl. cxii. figs. 1, 6, 7). It would seem that the early design in ivory, possibly foreign, had become traditional in the country.—W. M. W.

three female figures erect, with palm trees between them. In the two last compartments are three youthful figures, with two lions between them. The central figure is holding these by the paws, while the figures on the outside hold the tails. Similar bracelets were found in the Cervetri excavations, and are now in the Etruscan Museum at the Vatican.<sup>a</sup>

2. There was further found what very probably was a breast decoration. It is formed of two plates of silver joined by silver wires twisted in spirals. On the two plates are raised figures of swans, and nude human forms standing between the swans. On the head of each is a small globe. (Pl. VII. fig. 1.)

3. Two golden *οφεις* or bracelets in the form of spiral serpents.

4. Several pieces of amber for necklaces, among which are two in the form of apes, and a human figure standing with the right hand on the breast, and the left bending downwards, as though covering itself in front. The cord of the necklace passes through the ears, which are of round form.

5. A ram's head in glass paste, also for suspension on a necklace.

6. Some fibulæ of silver and amber, similar in form to those of bronze. The amber ones were banded with gold-leaf stamped in lines, as we noticed also in the first sepulchre at Veii.

7. Two thin gold plates, with female figures crowned, similar to those formerly found at Cervetri.

8. A circular bronze vessel, ornamented with strips of amber, and some substance like leather, covered with gold leaf and stamped with lines, which must have been set *cloisonné*.

9. At a short distance from this tomb lay a skeleton bearing a breast ornament of sheet gold, marked with the usual lines, and ornamented with the pieces of amber found around it. (Pl. XIII. fig. 1.)

10. In another part of the ground, not far removed, another skeleton was found, with some dark decayed substance on the breast, as cloth or skin, in the middle of which was a piece of rock crystal. At the head and sides were three silver fibulæ.

11. Two fibulæ, or pendants of silver, in the form of spiral cords, each of which sustains by a hook a little winged female figure. At the top is a similar figure between two winged lions; but it has nothing more of the human form than the head, below which are seen two open wings. Beneath these descends a kind of girded tunic. (Pl. VII. fig. 2.)

<sup>a</sup> Etruria Marittima, pl. liv. figs. 4, 5.

Here terminates my description of the reliques found in the tombs of Veii and Palestrina beneath the masses of stones, and I now leave the learned to deliberate as to what nation this remarkable custom may have appertained. In my opinion it must have been that of the Tyrrhenian Pelasgi. The letters and syllables discovered in a very important tomb at Cære, which closely corresponds with the famous one there (the Regolini-Galassi) where *Larthia* lay buried with her husband,<sup>a</sup> evidently belong to a period anterior to Etruscan sway, when this city bore the name of Agylla, and belonged to the Tyrrhenian Pelasgi. The same people must also, with Agylla, have held Præneste and Veii—that is, all the domain around the *Palatium* of Evander, itself a city of the Tyrrhenian Pelasgi, before the Latin or Sabine *Æqui* occupied Præneste, or the Etruscans established themselves in Veii and Agylla.

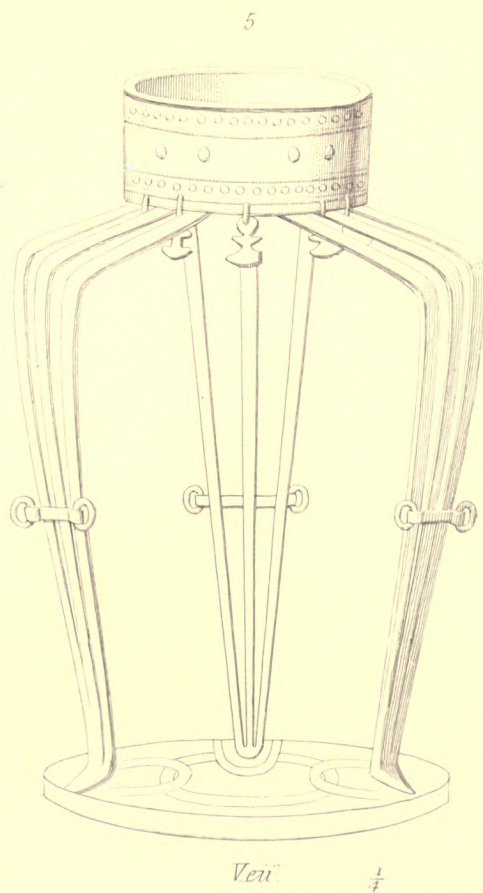
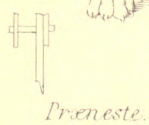
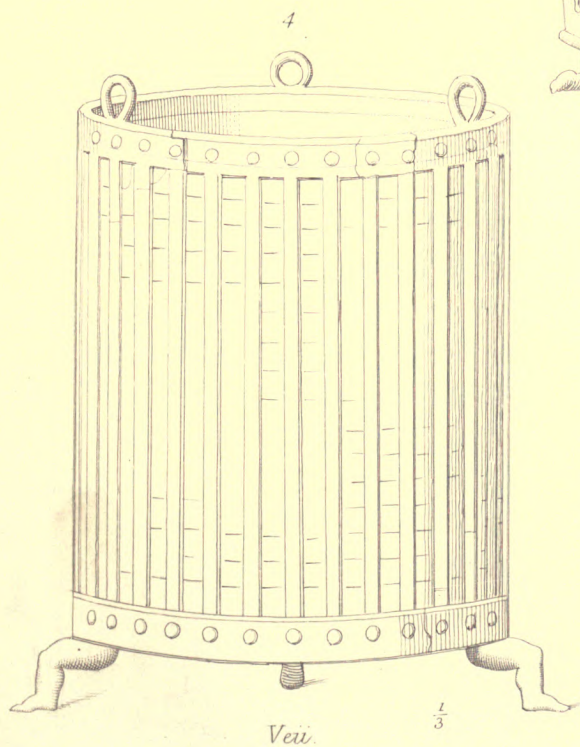
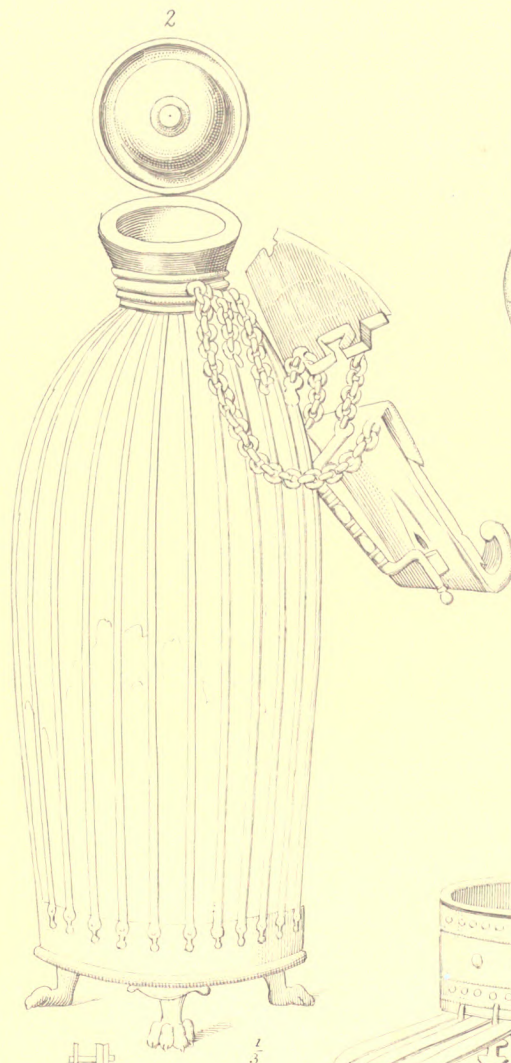
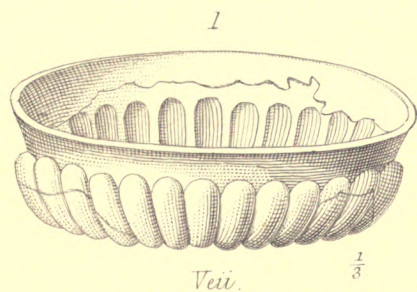
I do not mean to say that all the various reliques from Veii, and Cære, and Præneste, which we have just compared, have either a Pelasgic origin, or have come by Pelasgic agency; on the contrary, I distinguish in them three different styles of art—Egyptian, Etruscan, and a third, totally dissimilar from either of the former, which may be attributed to the Pelasgi. To this it seems to me belong the arms and vessels of bronze. Moreover there is no reason why *Larthia*, an Etruscan lady, should not have married a prince of Agylla.

R. GARRUCCI.

1 March 1866.

<sup>a</sup> Canina, Etruria Marittima.

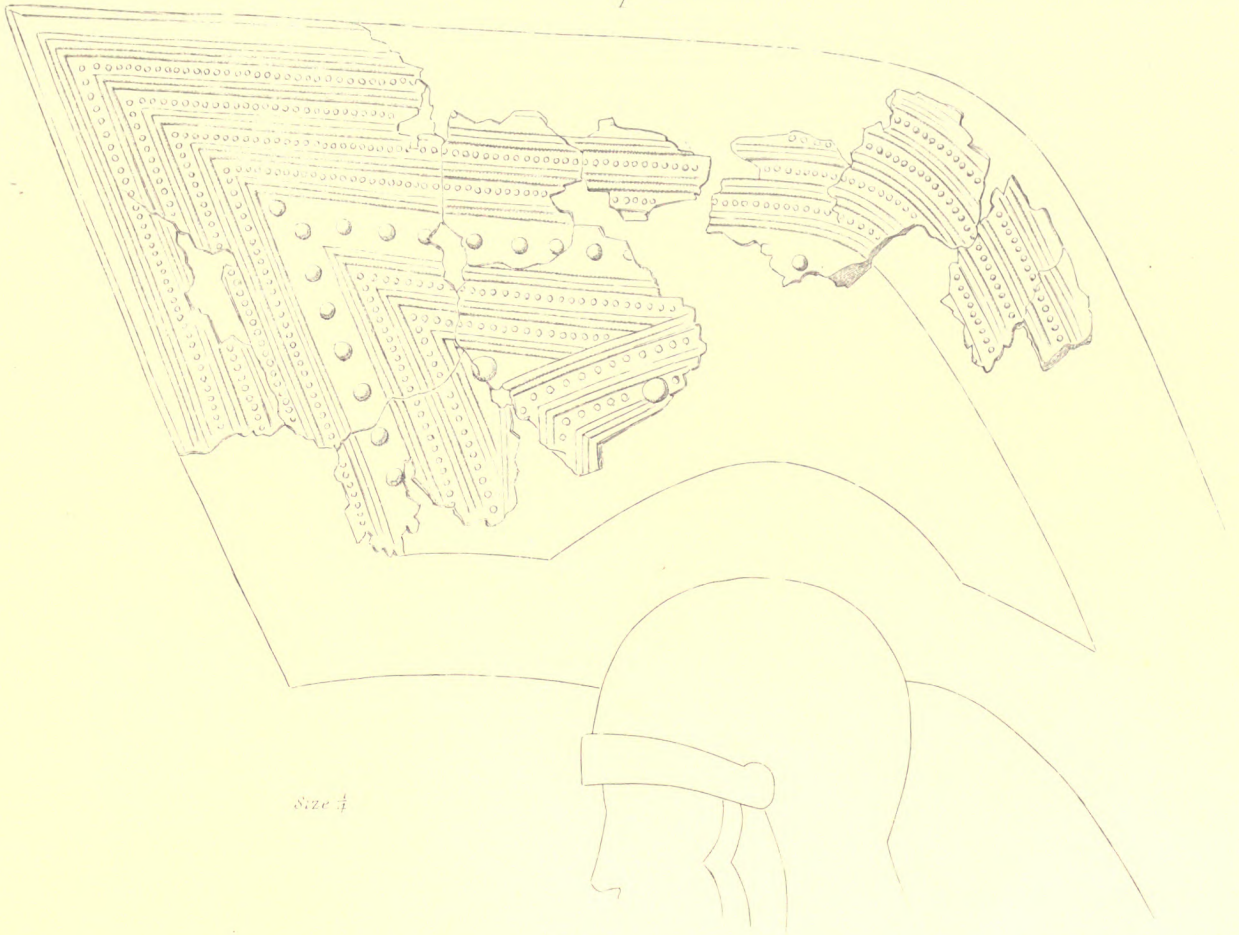






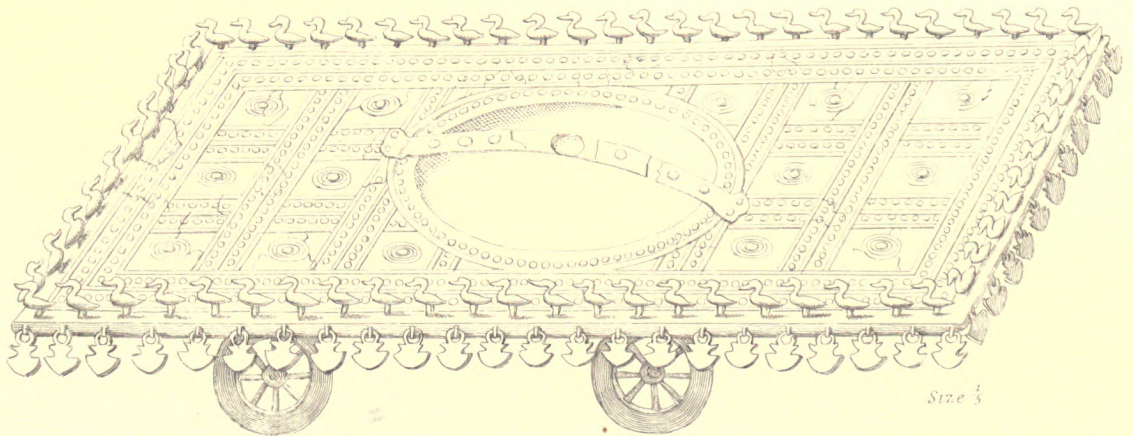


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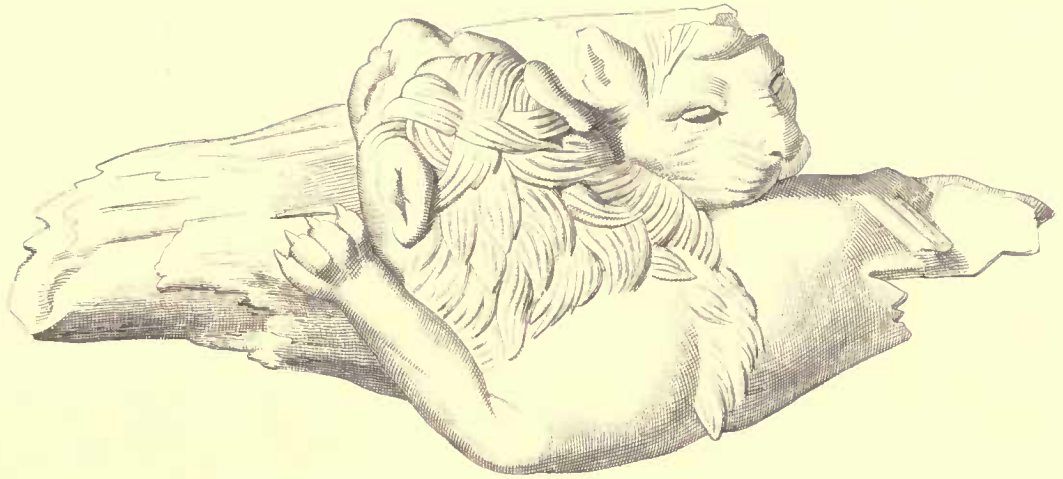


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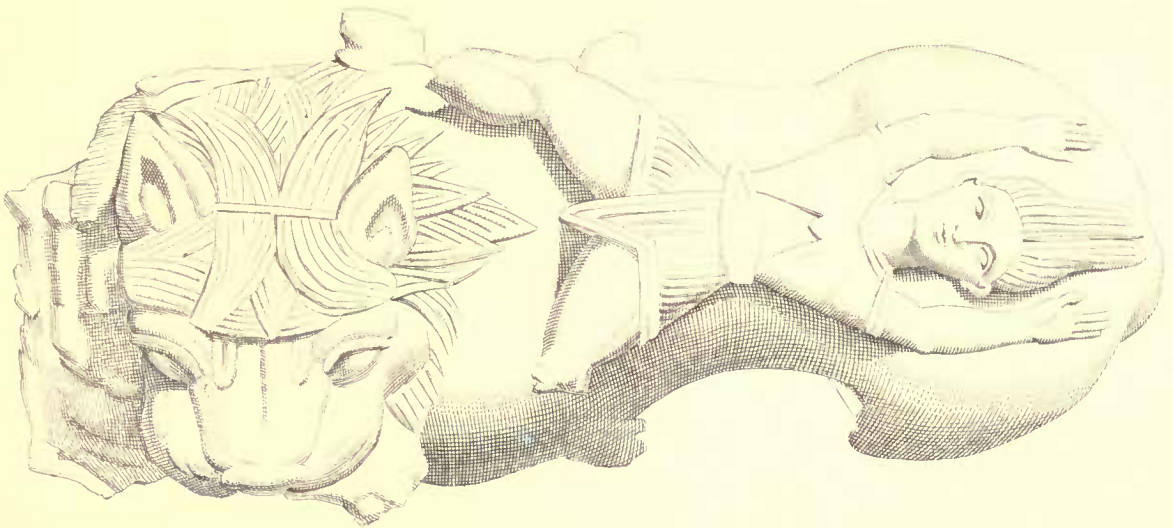




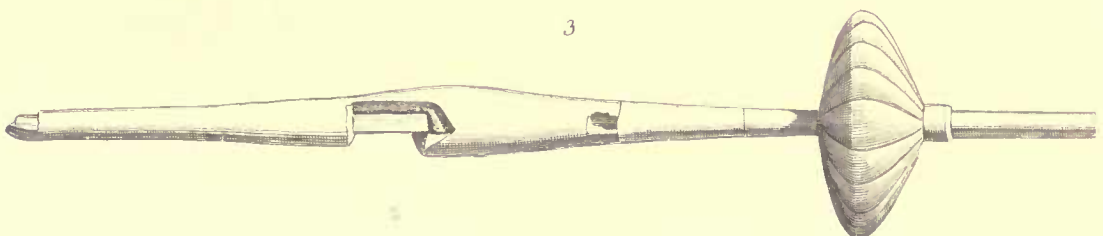
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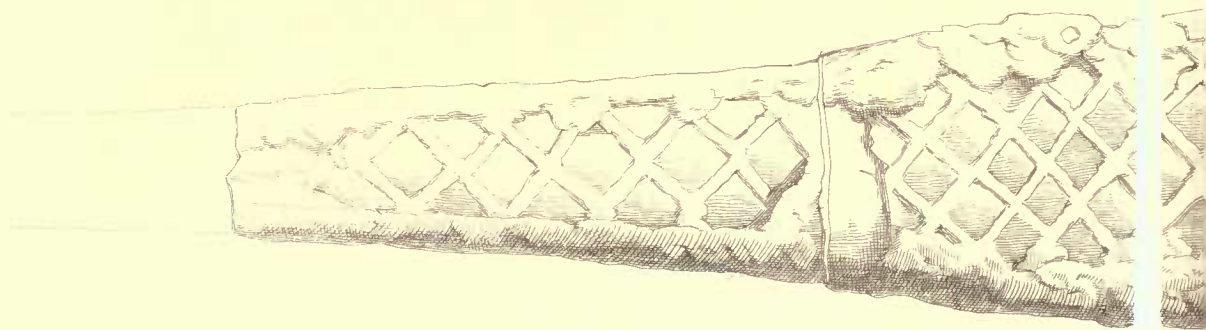
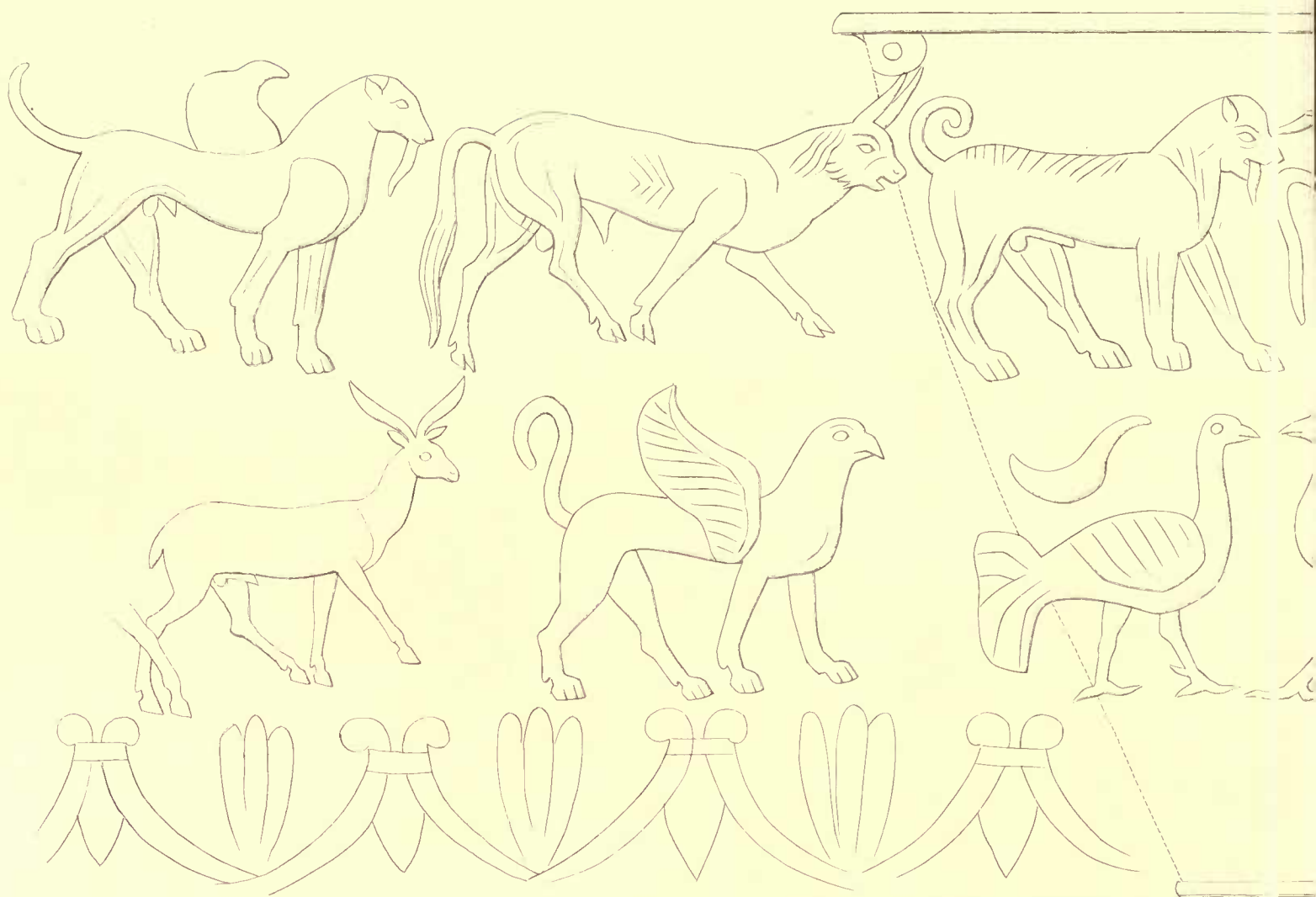
IVORY CARVINGS, PRÆNESTE, AND AMBER SPINDLE, VEII.

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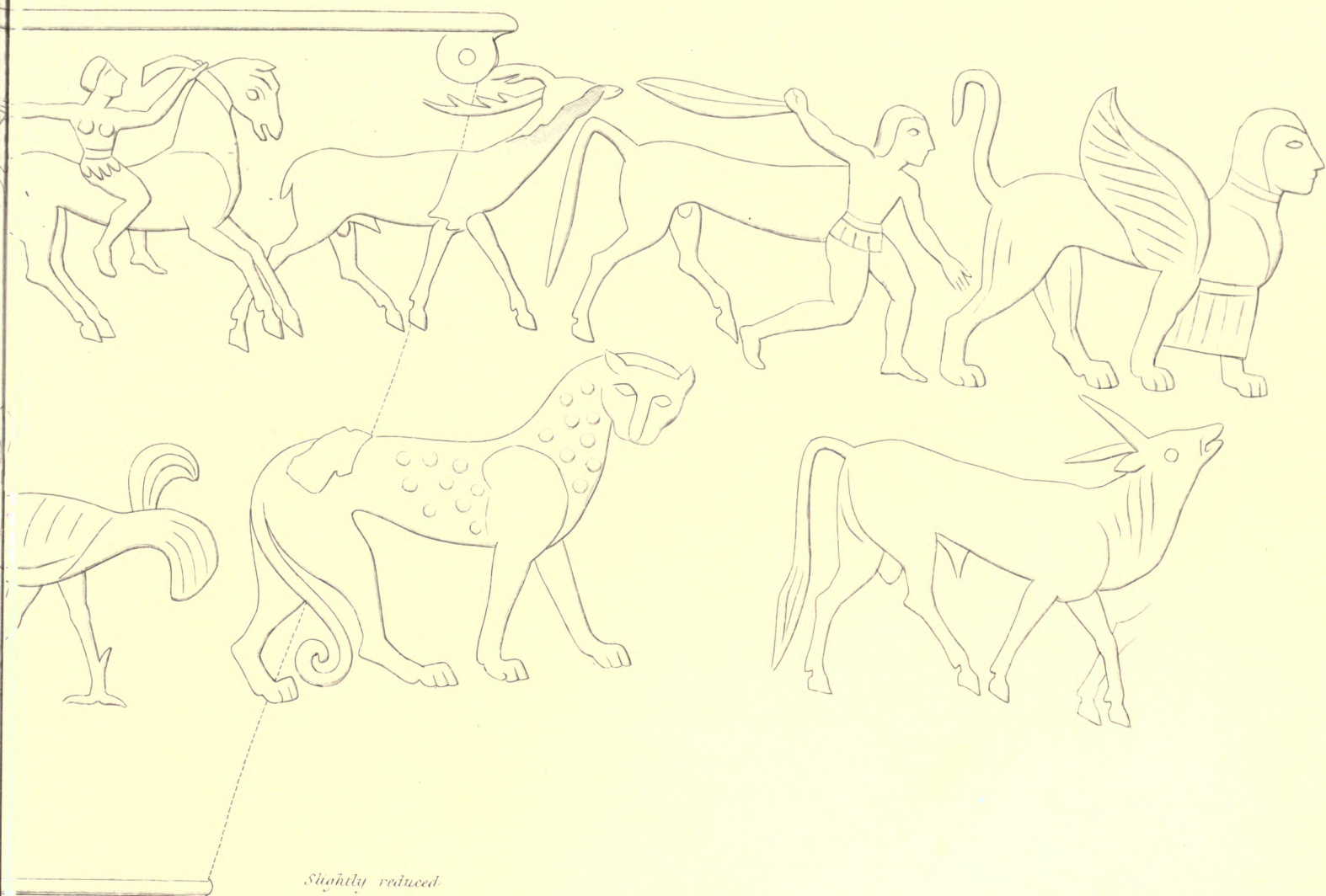




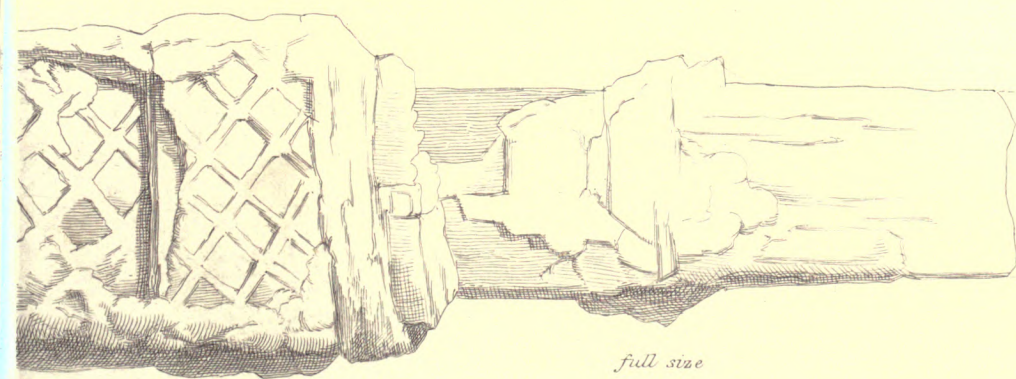








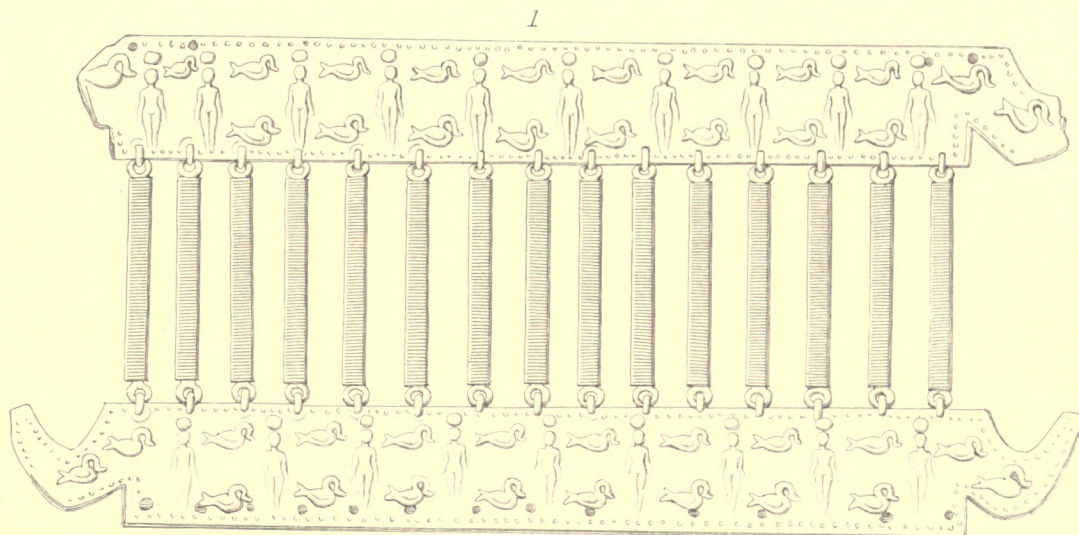
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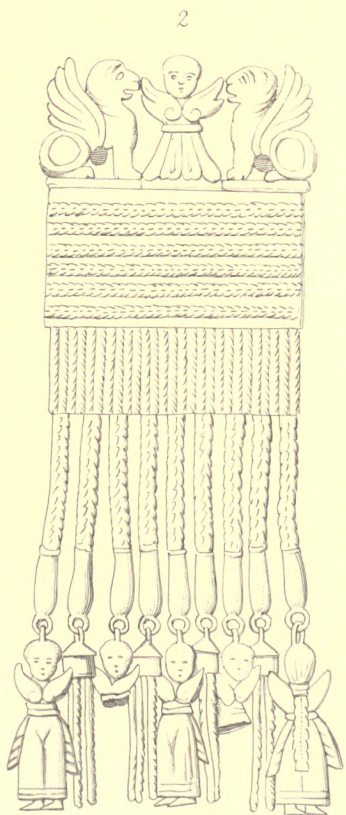
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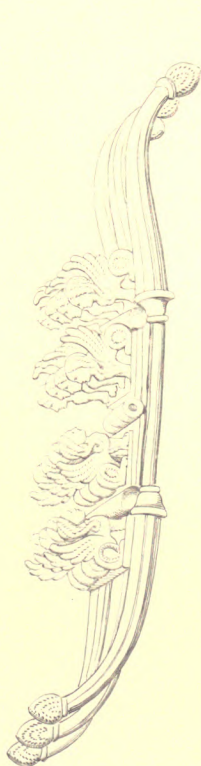




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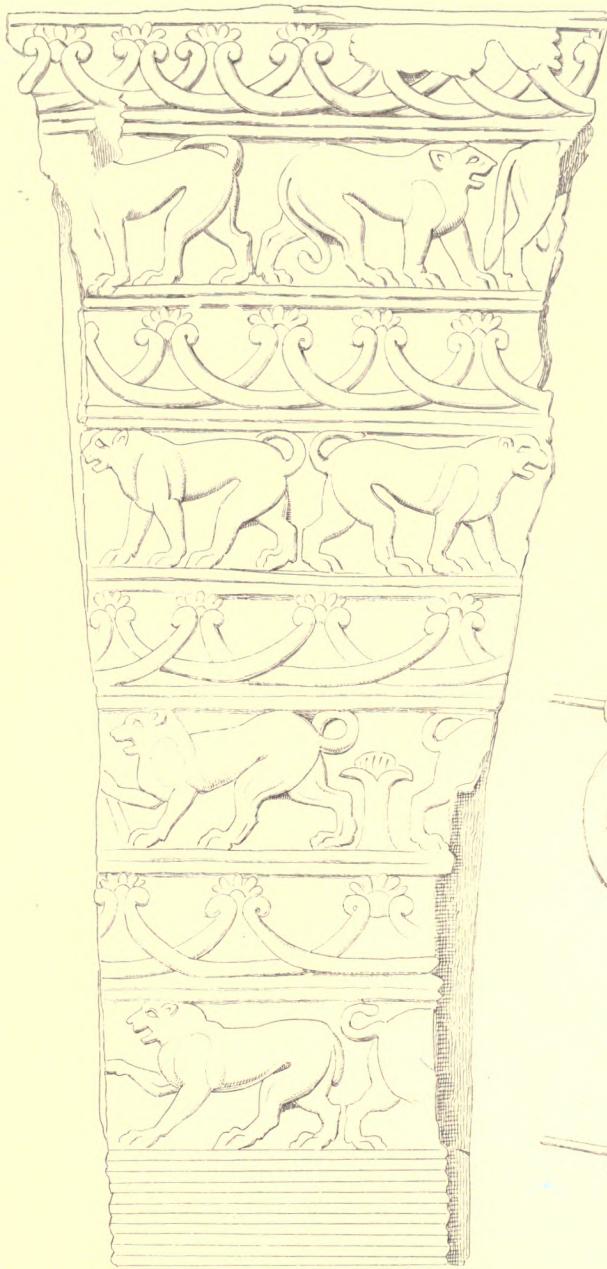
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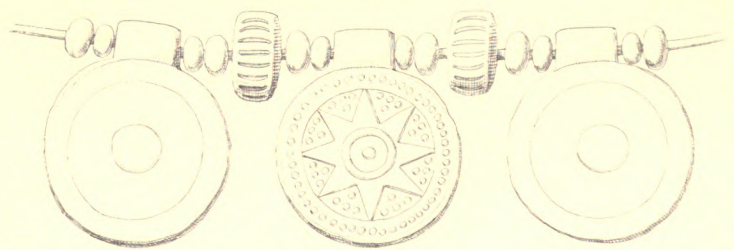
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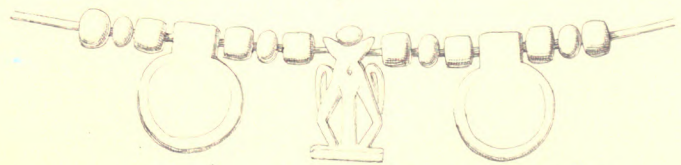
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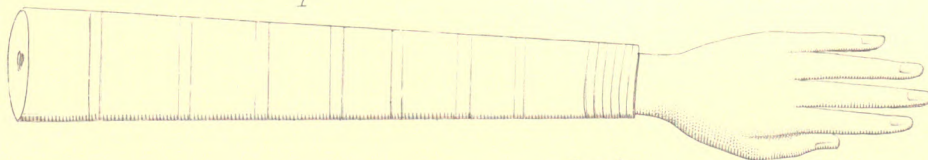
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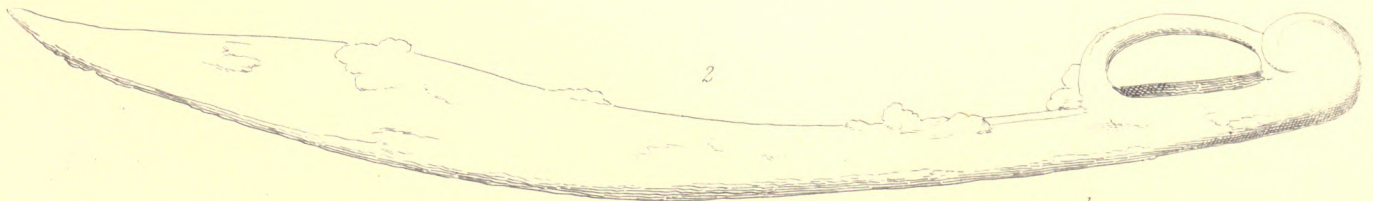
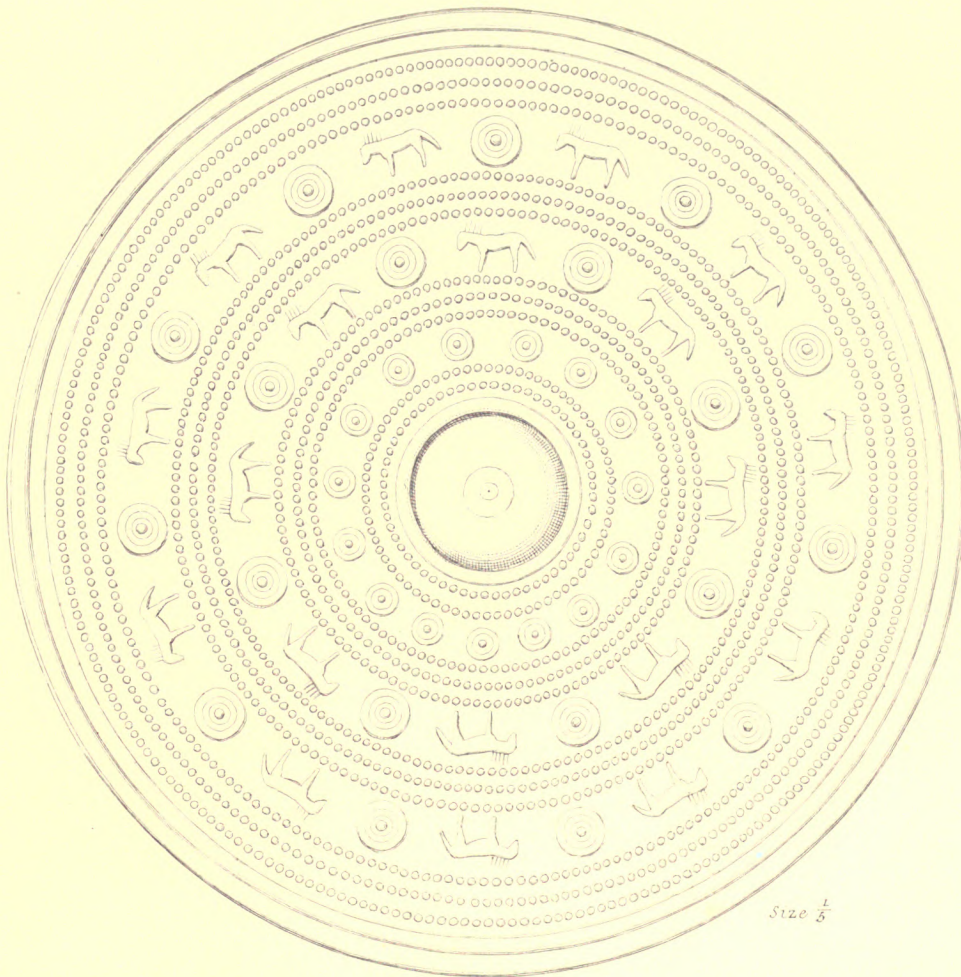


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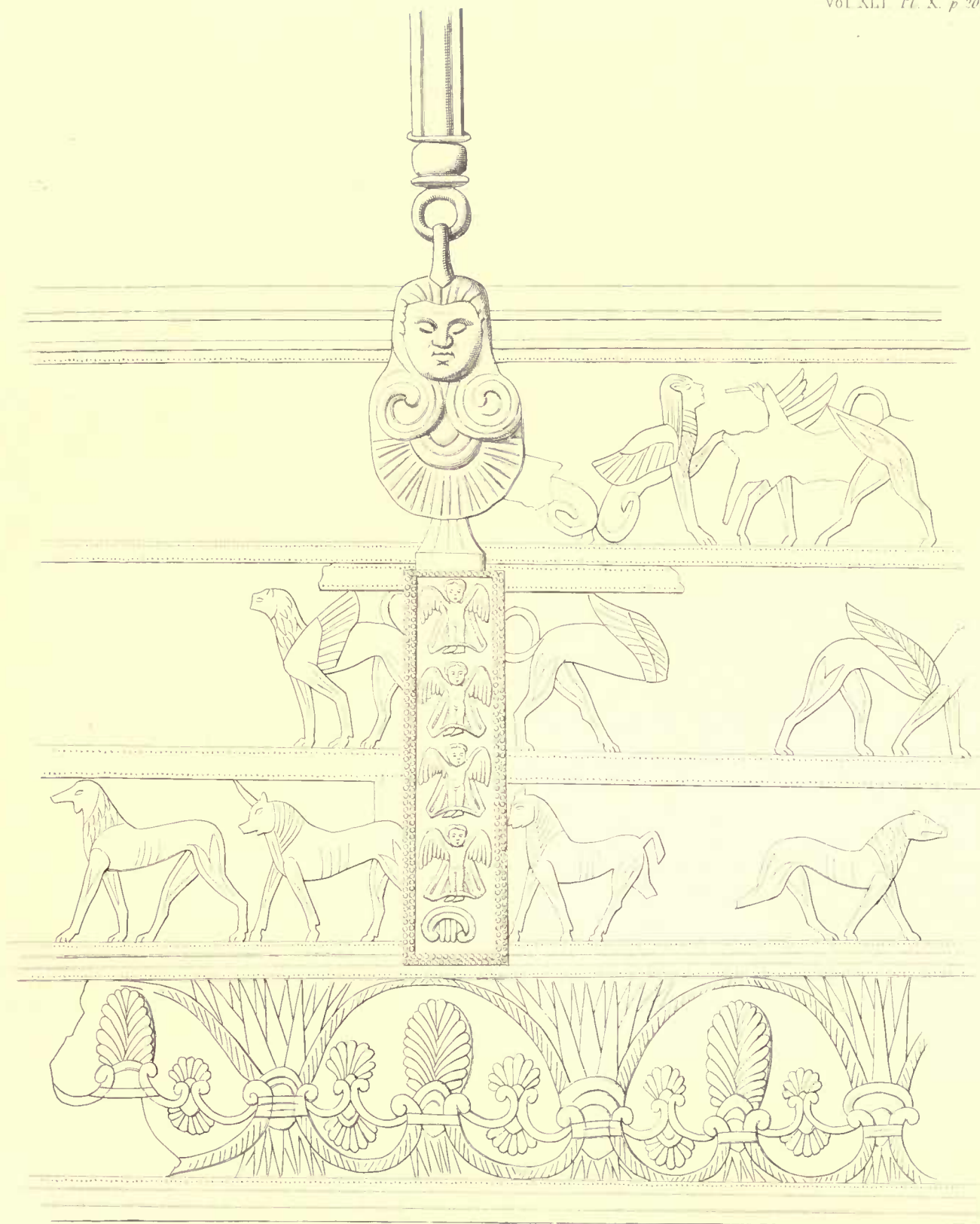
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BRONZE SHIELD AND IRON SWORD. PRÆNESTE.







SILVER ORNAMENTS OF A BUCKET, PRAENESTE.

*Full Size*

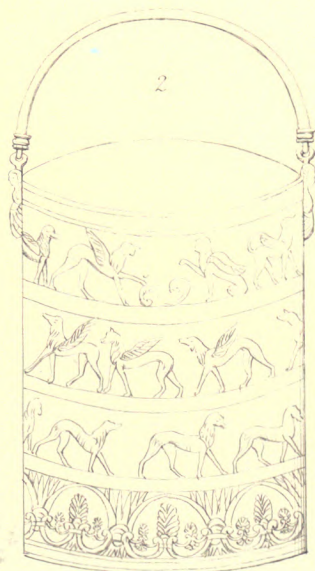




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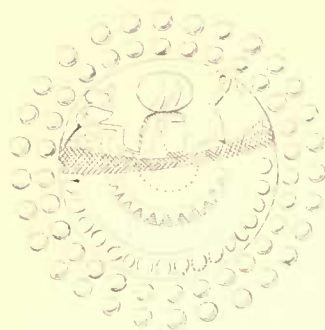
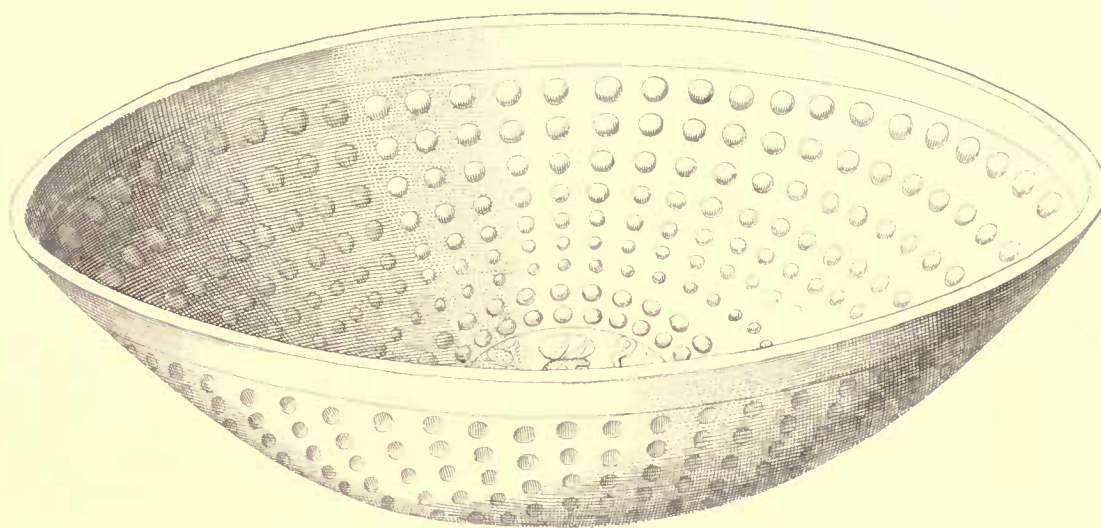


BUCKET WITH SILVER ORNAMENTS AND ITS COVER. PRÆNESTE.





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*Pattern within bowl*

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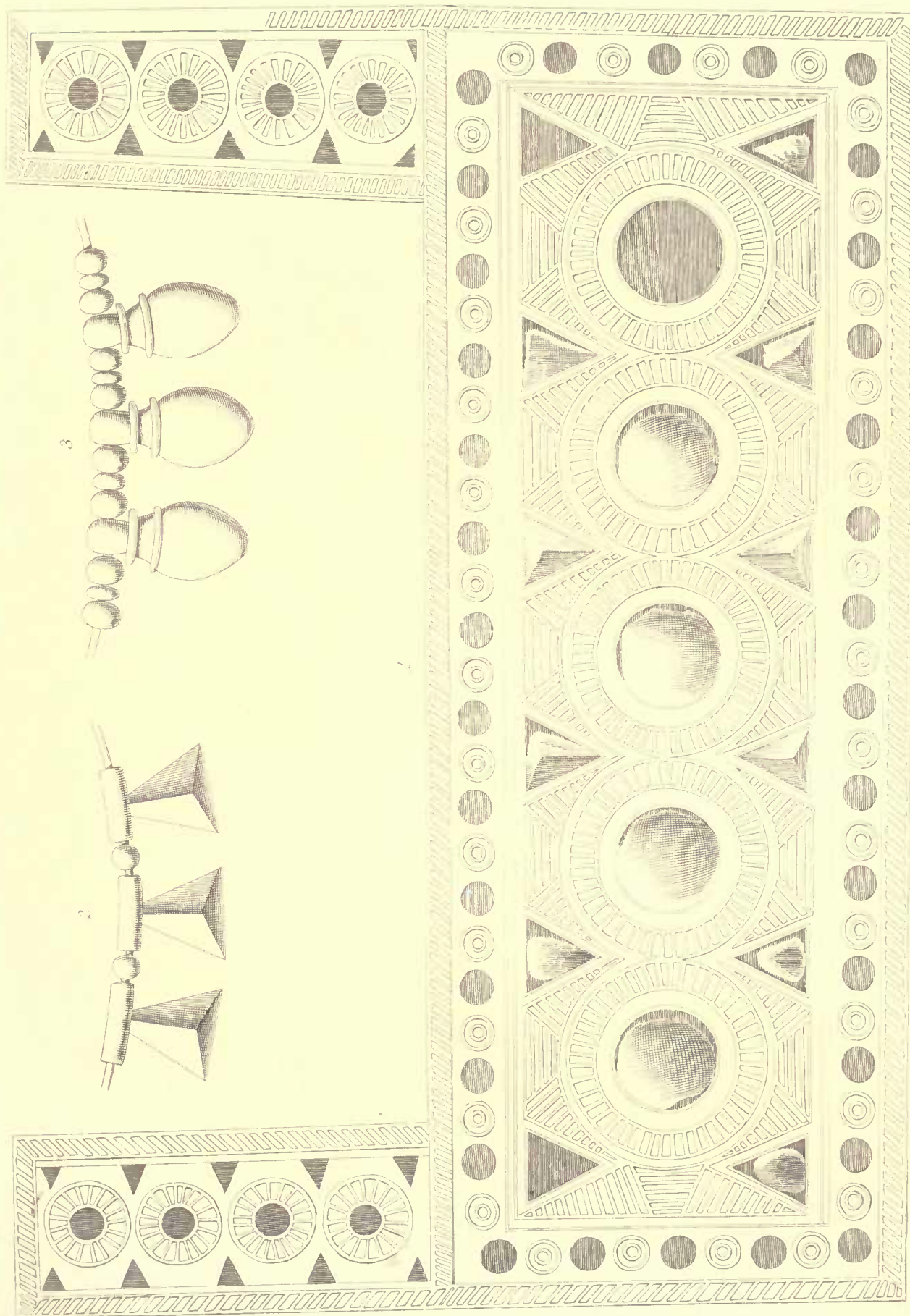


SILVER OBJECTS, PRÆNESTE.

*full size*







NECKLACES AND BRACELETS OF EGYPT. *Full size.*







XI.—*On the Legal Procedure of the Anglo-Saxons*: by HENRY CHARLES COOTE,  
*Esq. F.S.A.*

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Read December 14th, 1865.

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THE Anglo-Saxon legal procedure has failed to attract the attention either of the antiquary or the lawyer. The causes of this neglect, however, do not readily suggest themselves. As a practice it must have had merit, for amongst other germs which fructified under the fosterage of the Norman we find in it that of the English jury in a state of inception prompt for further development. With such bearings upon the future, this legal procedure may, I think, be reasonably regarded as a subject worthy of antiquarian research.

The Anglo-Saxon law discriminated its legal practice according as the object of the proceeding was reparation to an individual or vindication of the public interest. In other words, as it recognised civil suits and criminal prosecutions, so it varied its procedure in relation to each.

Of the Anglo-Saxon civil suit, the incidents were such as inspired confidence in a suitor whether he sought to protect a right or to assert it. The system must therefore have been settled and unswerving, such as a weak man could appeal to, and a powerful man could not override. Nothing can more forcibly illustrate the consistency of the system, and the confidence which it inspired, than a record which Mr. Kemble has edited in his great compilation.

King Æthelred, having satisfied himself by an extra-judicial inquiry, conducted in his own way, that certain lands at Hæceburn and at Bradanfeld, though occupied by one Leofwin, belonged of right to one Wynflæd, “sent straightway to Leofwin and signified this to him. Then would he not unless it was shot (referred) to the County Court (scirgemot). Then did man so;” and the cause was tried at the County Court after the usual manner of civil actions.<sup>a</sup>

We may regard this record as proving two things—that the right of a freeman to have his matters adjudicated in the Court of his county could not be superseded

<sup>a</sup> Cod. Diplom. vol. iii. p. 292.

by the interposition of authority; that the confidence which a defendant could feel in the method of that Court, though his antagonist were supported by the *magnates* of the nation, could only have been inspired by a knowledge that its proceedings were consistent and regular.

That being the character of the procedure, it should not be difficult, and it may be curious, to resuscitate its legal order.

In the first place, it would seem that an application of some sort was made by a plaintiff to some person having authority in connexion with the shire and its judicature. It is not, however, quite clear what this preliminary step was.

It may have been an application to the ealdorman sitting amongst the assembled county judges,<sup>a</sup> or it may have been made to the sheriff out of Court.

The immediate consequence of this step was the granting to the plaintiff of a summons against the defendant.<sup>b</sup> In the words of the Anglo-Saxon law, the latter was mooted to a County Court to attend on some day during the ordinary sittings of the seyrgemot, or at a Court specially appointed.<sup>c</sup>

The plaintiff equally with the defendant received a summons to attend the Court.<sup>d</sup>

On the day appointed, both suitors, if obedient to the summons, attended the Court. They brought with them their several witnesses, and the trial took place.

Such a trial (one of ejectment) has been *resumé* by an Anglo-Saxon lawyer in these words:\*

“Calumniam explieuerunt, et causam ventilaverunt ac discusserunt; cognitâque rei veritate, per iudicium abstulerunt Bluntesham a filiis Bogan pro duabus causis.”

<sup>a</sup> See the expression in Ine's Laws, c. 8. (Ancient Laws and Institutes published by the Record Commission.)

<sup>b</sup> In the laws of Hlothhære and Eadric (c. 8) it is said, “If a man make plaint against another in a suit, and he cite (moot) the man to a methel or a thing,” &c. (Gif man oðerne sace tihte, and he ðane mannan mote an meðle oppe an þinge). Here the plaint precedes the citation or summons. In the Book of Ely (p. 150 of edit. London, 1848), Brihtnoth the ealdorman orders a defendant to be summoned (jussit summoneri). These two passages being read together support the assertion in the text.

<sup>c</sup> Besides the ordinary sittings of the County Court, which were five in number, three being held in cities and two in the country, the ealdorman could appoint as many others as should be necessary. (Cnut's Laws, Secular, c. 18, buton hit ofter neod si.)

<sup>d</sup> Book of Ely, (ed. Stewart) p. 139. “Nec mora, fit maxima concio, summonetur Wlnothus (defendant) ad placitum, summonentur et filii Bogan (plaintiffs).” See p. 138, *ibid*.

\* Book of Ely (*ibidem*). I attribute the expression to an Anglo-Saxon lawyer advisedly. The writer, who in this chronicle describes Anglo-Saxon law-suits, shows the technical knowledge of a lawyer, and by his use of Anglo-Saxon inflections must have been an Anglo-Saxon, and not an Englishman writing *post Conquestum*.

In the concrete no modern could describe a trial at the assizes in words more satisfactory to those who care less for details than results.

To those who do not, I will endeavour to extend the summary into its Anglo-Saxon particulars.

As the first thing of all, the plaintiff was called upon by the judges to make his claim (*geagnian*).<sup>a</sup>

This was initiated by his taking an oath describing his claim and averring that it was just and well founded.<sup>b</sup>

This was the plaintiff's fore-oath, a step which could never be dispensed with.<sup>c</sup> If the plaintiff would not give it, judgment went for the defendant.<sup>d</sup>

After this was done the plaintiff "led" his witnesses.<sup>e</sup>

Attention is due to this word, for it expresses the voluntary attendance of witnesses upon a plaintiff, that which in Anglo-Norman law was afterwards called *suit* or *suite*.

This leading was peculiar to the civil action.

The witnesses so led by the plaintiff attended out of clanship, or perhaps the sense of justice and duty.

Their attendance was enforced by no legal compulsion; they were not subpoenaed and did not appear to a call. In a civil suit there existed no legal means of enforcing the attendance of witnesses either in the interest of plaintiff or defendant.

And, as it was in the power of these witnesses to stay away or refuse their attendance when and as they pleased, the trial of an Anglo-Saxon action was often deferred over a space of years.<sup>f</sup>

This ultroneous character of the witnesses should be noted, as it is the great and leading distinction between the evidence in civil and in criminal cases.

The plaintiff's witnesses on their production all in turn took the following oath :

<sup>a</sup> Cod. Dipl. vol. iii. p. 292. "Then man assigned Wynflæd that she must *geahnian*," &c.

<sup>b</sup> Ibid. and Cnut's Laws, Secular, cc. 22.

<sup>c</sup> Cnut, *as above*.

<sup>d</sup> Book of Ely, p. 139: "Sed filii Bogan (plaintiffs) noluerunt suscipere juramentum, statuerunt itaque omnes ut Wlnothus Bluntesham haberet."

<sup>e</sup> Book of Ely, pp. 130, 139, "produxit, adduxit;" Cod. Dipl. *as above*, Wynflæd "led the *ahnung*;" *Confessionale Ecgberti*, c. 34, "Se 7e bið on aðe gelædd," &c.

<sup>f</sup> Book of Ely, p. 141, "Qua de causa lis et altercatio permaxima orta est, et multos annos habita, inter eos;" and (*ibid.*) "res etenim eadem multis annis in lite versabatur."



"In the name of the Almighty God, as I here for N. in true witness stand unbidden and unbought, so I with my eyes oversaw, and with my ears overheard, that which I with him say."<sup>a</sup>

If this oath be not sufficient to show that the witnesses gave testimony in a civil suit in the sense in which we now understand that term, we learn from another source that they did so; that they afforded details at the same time that they directly verified the fact or transaction in question.<sup>b</sup>

It appears that a definite number of consentient witnesses was necessary to prove the plaintiff's case. If this definite number gave a consensual testimony, in the words of the Anglo-Saxon law the plaintiff gave the full oath.<sup>c</sup>

It may be fairly supposed, however, that the number varied with the nature and character of the suit; the vindication of a strayed cow would not demand an equal number with the claim for a manor and its royalties. And witnesses would be more numerous in civil cases than in criminal, as the issue of the latter would be more narrowed.

If the full oath was not given, the plaintiff was non-suited.<sup>d</sup>

If on the contrary it was given in its fulness, it then became incumbent upon the defendant to make out his defence if he had one.<sup>e</sup>

If he had no defence, that is, if he would not consent to take the fore-oath which I shall presently mention, and which was the prelude to his evidence, the plaintiff was entitled to judgment.<sup>f</sup>

<sup>a</sup> See oaths in Thorpe's Laws. Also Cnut's Laws, Secular, c. 23.

<sup>b</sup> Book of Ely, p. 150. The ealdorman "veniens ad Dittune, cœpit ibi disserere et enarrare causas et calumpnias, conventiones, et pacta infracta, quæ habuit super eum, per testimonium multorum legalium hominum." See also a clearer instance at p. 130, "producti ergo testes . . . perhibuerunt testimonium, &c. Then follow details of evidence.

<sup>c</sup> Cod. Dipl. vol. iii. p. 293. "Then she led the ahnung, &c. until all the full oath were forth come both in men and women." Book of Ely, p. 139: "Wlnothus adduxit secum illuc perplures viros fideles, scilicet omnes meliores de vi. hundredis . . . Tunc Wlnothus adduxit fideles viros plusquam mille ut per juramentum illorum sibi vindicarent eandem terram." Wlnothus was defendant.

<sup>d</sup> This may be inferred from the fact of the law requiring the full oath to be adduced by the plaintiff.

<sup>e</sup> See the Cod. Dipl. *as above*. Here the plaintiff had taken the fore-oath, and had led up the full number of witnesses, who swore with her. "Then quoth the witan, who were there, that it were better that man let (the defendant's) oath away than that man should give it, because thereafter there would be no friendship," &c. The judgment of the Court was that the land should be restored to the plaintiff.

<sup>f</sup> Cod. Dipl. *as above*. Book of Ely, p. 150. "Cui, omnia illata deneganti et contradicenti, statuerunt ut cum jure jurando se purgaret; quod cum facere nequibat, nec, qui secum jurare debuerant, habere poterat, decretum est, ut eo expulso Brihtnothus alderman utrisque hydys uteretur."

If the defendant had a defence he proceeded as follows :

The defendant took his fore-oath, deposing to his innocent possession or his lawful purchase of the chose in question, that the goods sold were sound, that the debt was paid, &c.<sup>a</sup> He then led or produced his witnesses, who took an oath similar to that of the plaintiff's witnesses.

These witnesses were as voluntary as those of the plaintiff.

If the defendant's witnesses gave consensual evidence on the oath, some fixed number constituting a full oath, but which does not appear, the plaintiff's claim would be contradicted, and the defendant would be dismissed.<sup>b</sup>

If this consensual evidence of the defendant broke down, *i.e.* if the full oath on his part was not given, the plaintiff was entitled to judgment, and obtained it of the Court.<sup>c</sup>

From what I have stated in regard to Anglo-Saxon civil procedure, the reader will have seen that it is identical with what in succeeding generations was called in England the wager of law.

After judgment followed execution, unless the plaintiff consented to take security in lieu of immediate execution.<sup>d</sup>

In the criminal prosecution the proceeding was as follows :

The delinquent was accused (probably at a County Court) by some person who *pro eâ vice* constituted himself prosecutor.<sup>e</sup>

The accused was at liberty to give security to appear and take his trial if he could provide it, and the security might be given upon his own property or be that of bail. Otherwise he was consigned to a King's prison until the day of trial.<sup>f</sup>

<sup>a</sup> See oaths in the Laws.

<sup>b</sup> This is to be inferred, as without it there could be no defence. It is supported by the analogy of the function of the other oath—the criminal oath. If the accused's witnesses all swore consentiently, the accused was acquitted. If they did not so do, the oath burst, and the accused was convicted. See Æthelred's Domas, c. 1.

<sup>c</sup> Book of Ely *passim*.

<sup>d</sup> Hlothhære and Eadric's Laws, c. 10; Book of Ely, p. 137: "Tunc judicantes statuerunt, ut abbas suam terram cum palude et piscatione habere deberet; statuerunt etiam ut Begmundus et cognati præfatæ viduæ suum piscem de vi annis abbati solverent et regi forisfacturam darent; statuerunt quoque ut si sponte sua hoc reddere nollent, captione suæ pecuniæ constricti justificarentur." See an instance of the County Court Judges assessing damages in their judgment in the Book of Ely, p. 123.

<sup>e</sup> Ine's Laws, c. 62. Ælfred's Laws, c. 22. The latter has reference to a criminal prosecution. See the use of the word "yppe" in Pœnitentiali Ecgberti, additam. c. 2.

<sup>f</sup> Ine's Laws, c. 62.

On that day he appeared in discharge of his bail, or was brought up by the custodian of the gaol.

The Court being assembled, the prosecutor took a fore-oath of the following tenor:<sup>a</sup>

“By the Lord I accuse not N either for hatred or for envy, or for unlawful lust of gain; nor know I anything soother; but as my informant to me said, and I myself in sooth believe, that he was the thief of my property.”

The crime would of course vary.

This fore-oath was indispensable, and gave to the accusation (tihtl) its legal effect.<sup>b</sup>

When the prosecutor had taken the oath, the accused was bound to clear himself “if he dared.”<sup>c</sup>

The trial from this period became the “lad” or clearing of the accused.<sup>d</sup>

The order of his purgation was as follows:

He took an oath, in assertion of his own innocence, of this tenor:<sup>e</sup>

“By the Lord I am guiltless both in deed and counsel of the accusation (tihtl) which N charges against me.”

This was the preliminary of the “lad.”<sup>f</sup>

The fore-oath of the accused had therefore the effect of a pleader of Not Guilty, and upon this issue the evidence was gone into.

Without it, *i.e.* if the accused dared not take it, there could be and was no trial, for there was no innocence to assert, the accused being considered guilty, because he had rejected the means which the law allowed him of asserting his innocence.

I have said that the accused was bound by law to clear himself of the charge.

This neither in fact nor in theory amounted to the same thing as the throwing upon him the *onus* of proving his own innocence, for by the manner in which the evidence was collected and obtained the result of the trial was practically the same as if the *onus probandi* lay upon the prosecutor.

The marshalling and taking of the evidence was thus conducted:

There was only one set of witnesses in a criminal matter, and this was in general parlance called the “lad,” as the clearing of the accused depended upon the result of its opinion.<sup>g</sup>

<sup>a</sup> See oaths in Laws.

<sup>b</sup> Ordinance respecting the Dunsætas, c. 6.

<sup>c</sup> Ælfred and Guthrum's Peace, c. 3, “gif he hine ladian dyrrē.”

<sup>d</sup> The Laws, *passim*.

<sup>e</sup> See oath in Laws.

<sup>f</sup> Ine, c. 54.

<sup>g</sup> Ine, c. 54; Dunsætas, c. 6; Æthelred's Domas, c. 13.



These witnesses were not led or produced either by the prosecutor or the accused.

They were not voluntary. On the contrary, their attendance in Court was wholly compulsory, for they were *named*, *i.e.* nominated and subpoenaed, by the sheriff of the county,<sup>a</sup> that officer being in these ages the vice-judge of the county.

They were summoned by that officer from the hundred where the *corpus delicti* lay, *i. e.* the *venne* or vicinity.<sup>b</sup>

The witnesses so summoned were the equals or peers of the accused.<sup>c</sup>

A larger number of witnesses was named than was afterwards actually sworn.<sup>d</sup>

Where witnesses were thus forced upon the accused, it would be only fair that there should be some power in him of obtaining their rejection should they be provably uncreditable, hostile, or malignant.

This safeguard against injustice the Anglo-Saxons possessed.<sup>e</sup>

The accused might choose his witnesses, to the extent of a defined number, out of the gross number summoned, and the choice of these witnesses was the rejection of the rest.

The selected witnesses were denominated the *cyreath*.<sup>f</sup>

The witnesses were then sworn in the following formula, that is, if they could consent, all or in major part, to take it.<sup>g</sup>

The oath was this :

“By the Lord the oath is clean and unperjured which N. (the accused) has sworn.”

It would seem probable that a majority of the oath found the verdict, for as they were witnesses nothing more was required than a weight of evidence.

If the whole or the majority took this oath, the accused was acquitted.<sup>h</sup> If

<sup>a</sup> Æthelred's Domas, c. 13; Æthelstan's Laws, c. 9; Laws of the Northumbrian Priests, cc. 51, 52, 53.

<sup>b</sup> Hlothhære and Eadric, c. 5. This is a direct authority; but the general rule of law is also inferrible from the sub-rule that where the accused was *infamis* the oath was to be summoned out of several hundreds. Cnut's Laws, c. 22.

<sup>c</sup> Inc's Laws, c. 30, “by his own were.” But this is stated more explicitly in the Laws of the Northumbrian Priests, cc. 51, 52, 53; and Wihtræd, c. 21. Ælfred and Guthrum's Peace, c. 3.

<sup>d</sup> See *post*.

<sup>e</sup> “Odium vel aliquid competens.” Hen. I. L.L. c. 31, § 8; Æthelstan, c. 10. (Perjury.)

<sup>f</sup> Dunsætas c. 6. Cnut, c. 66. See also L.L. Hen. I. c. 31, s. 6, 7, 8. These sections refer to the jury.

<sup>g</sup> See oaths in Laws; Thorpe, vol. i. p. 181. The position of this oath, as following those of the prosecutor and the accused, shows it to be that of the jury.

<sup>h</sup> Æthelred's Domas, c. 13.

they declined taking the oath wholly or in part, the oath burst, and the accused was convicted—the lad failed.<sup>a</sup>

The witnesses in a criminal prosecution did not give evidence, but were limited to the form of oath I have quoted.

The rationale of this is evident: the Court had taken measures to summon those who were best acquainted with the fact in question. And whatever opinion they solemnly found was accepted by the Court without criticism.

The result of the swearing, whether it showed the consensual opinion of all or of a majority, was held to carry conviction of the fact, and to bind the Court, with whom there rested no discretion except to believe it.<sup>b</sup>

Upon the foundation of this finding of the witnesses, the judges made their decree and all such subsidiary orders as might be necessary.

In all this there is much to approve of. Though the Anglo-Saxons could leave the evidence of civil matters to the parties interested in the result, they saw and enforced a distinction between those suits and criminal matters. They made provision that the witnesses in the latter case should be compulsory, in order that no evidence should be lost, and that the witnesses should not be tampered with by either side; above all, that they should come from the venue, the place where the offence was committed, and where its proofs lay. And with this there was freedom left to the accused, which enabled him to weed away those who hated him or unduly favoured the prosecutor.

All this however is totally beyond the capacity of the mere Anglo-Saxon; I mean his capacity for original conception and invention.

The principles must therefore mount higher than the incoming of this nation; and it is in the history of our country that we shall find the solution.

The historical source to which I refer both the civil and the criminal procedure of the Anglo-Saxons is Roman, the law of this country before the Anglo-Saxons effected their settlements.<sup>c</sup>

The procedure of a civil suit, *judicium privatum*, according to the Roman law as it existed in Western Europe may be stated thus:

<sup>a</sup> Eadward, c. 3; Dunsætas, cc. 4 and 6. The latter authority regards the oath as being *torn*, but the metaphor is not very dissimilar.

<sup>b</sup> Wihtræd, c. 21; Domas of Æthelred, c. 13. The first authority declares the verdict to be uncontrovertible, the other that the "doom" of the jury shall stand.

<sup>c</sup> This assertion is very much strengthened by the interesting fact that the jury, as the Anglo-Saxons understood it, is to be found in the early Welsh Laws.

There were issuable pleadings resembling in effect those which our own legal practice has made familiar to us

The evidence in support of the issues was entirely voluntary on the part of the witnesses both of the plaintiff and of the defendant.<sup>a</sup> Until the reform of Justinian the subpoena did not exist in civil cases.<sup>b</sup>

This was the great distinction between evidence as taken in a civil suit, and as taken in a criminal prosecution.

As regards the preliminary steps of the latter before the taking of the evidence the following is a summary.

Bail was accepted for the appearance of the accused.<sup>c</sup>

The accuser made a formal and detailed accusation, which he either presented in writing at the bureau of the *Præses* or it was taken down *apud acta* at the same place by some official.<sup>d</sup>

In other cases, as of public robbers, the *irenarchæ* arrested them and sent them to trial.

After this had been done, the accused, according to the nature of the charge or his own position in society, was sent to prison, committed to the safe keeping of a guard, was admitted to bail or was relieved from giving it.<sup>e</sup>

The principles by which a criminal trial was regulated were these.

The accused was bound to prove his *intention*, as the effect of his charge was called.<sup>f</sup>

So far he was like a plaintiff, but with the fear of a *talio* in addition.<sup>g</sup>

But by the same law also the accused was bound to purge himself; "*purgare se debet*," says Ulpian.<sup>h</sup>

The first of these principles is of course plain and plausible enough, but the other as a rule of law, in respect of its seeming injustice, requires some explana-

<sup>a</sup> Cod. 4, tit. 20; de Testibus, s. 16; Novell de Test. 90. c. 8.

<sup>b</sup> Accordingly great facilities were afforded for giving evidence in civil matters. The judge who tried the cause might take the evidence orally or he might read at the trial evidence taken elsewhere, the latter consisting of depositions or voluntary affidavits made before any *magistratus* within whose provinces or territories the witnesses might be. Cod. 4, 20, pp. 2, 15, and 20; *ibid.* tit. 21, p. 18. See the expressions used in Dig. 22, tit. 5, p. 3, § 4, and p. 22. See also Quintilian, *Instit. Orat.* 5, 7.

<sup>c</sup> See Calvin's *Lex. Jurid.* and Festus *sub voce Vadem*.

<sup>d</sup> Paulus in Dig. 48, tit. 2, cc. 3 and 6; *ibid.* tit. 5, c. 11, p. 6; Cod. 9, tit. 2, c. 8.

<sup>e</sup> Dig. 48, tit. 3, c. 1; and the following *capita*.

<sup>f</sup> Dig. 48, tit. 18, c. 18, p. 2.

<sup>g</sup> Symmaehi *Epist.* lib. 10, ep. ult.

<sup>h</sup> See the expression repeated, Dig. 48, tit. 1. c. 5; *ibid.* tit. 4, c. 11; *ibid.* tit. 17, c. 1, p. 3, c. 5. So Apuleius, de Mundo, c. 35, "*Reus purgandi se necessitate, insectandi studio accusator venit*."



tion. Its injustice, however, had more of seeming than of reality. And it would appear after all to have been only a *façon de parler*, for other authorities show that its real and operative meaning was no more or less than this,—the *reus* should leave it to the proofs of the case to show his innocence.<sup>a</sup>

This being so, there must have been something in the mode of inquiry to make it possible, and so there was.

A Roman criminal trial was a public inquest conducted by the magistrate who presided over the country where the crime was committed.<sup>b</sup>

The law called it emphatically an investigation of the truth.<sup>c</sup>

This great local judge ordered all such witnesses to appear as the accuser vouched (*laudavit*), and as he himself thought necessary.<sup>d</sup> In other words, they were subpœnaed.

And as these were days of limited locomotion, all the necessary witnesses would be within the summoning power of the judge.

Every person who could be alleged to be *cognitor vel præsens* was subpœnaed.<sup>e</sup>

The evocation of the witnesses by the Court rendered them only one set. This is contrasted with the production of witnesses on each side in a civil suit.<sup>f</sup>

Witnesses in criminal cases were always confronted with the judge.<sup>g</sup>

Witnesses being gathered together by these means, it would frequently happen that they knew nothing of the matter upon which they had been summoned.

The Roman law provided for this. The witness being sworn to give his testimony of what he knew, might swear that he knew nothing.<sup>h</sup>

<sup>a</sup> That the Roman system rendered the truth attainable we are assured by a Roman subject and citizen. Apuleius (*De Magia*) says, "Quippe insimulari quivis innocens potest, revinci nisi nocens non potest."

<sup>b</sup> *Passim* in the Laws: St. Cyprian, *Epist.* 54: "Cum statutum sit ab omnibus nobis . . . ut unius cujusque causa illic audiatur, ubi est crimen admissum."

<sup>c</sup> Cod. 9, tit. 41, c. 8.

<sup>d</sup> Cod. Theod. 11, tit. 39, c. 13; and Godefroye's learned and interesting note; Cod. 4, c. 20, pp. 11, 16; Novell. 90, p. 8; Symmach, *ante*. For an exception to the rule see Pliny's Letters, lib. 5, ep. 20; see also Domat (*Strahan's translation*), vol. i. p. 451. Dr. Smith is thus wrong in stating generally that there was no subpœna before Justinian (*Classical Dictionary*, p. 529).

<sup>e</sup> See the expressions used by the Council of Carthage quoted by Godefroye in his note to Cod. Theod. 11, tit. 39, c. 8, "in judicium ad testimonium devocari eum quia cognitor vel præsens fuerit."

<sup>f</sup> Cod. 4, tit. 20, p. 11. That the evidence taken at a criminal trial was considered one context only—the result of the judicial inquiry—appears by the expressions of Constantine (Cod. Theod. 11, tit. 36, c. 1): "Quod si reus . . . partem, pro defensione sui ex testibus quæstioneque propositâ, possit arripere parte vero obrui, accusarique videatur," &c.

<sup>g</sup> Dig. 48, tit. 18, c. 1, p. 21; Cod. 4, tit. 20, p. 14, "ad judicantis intrare secretum."

<sup>h</sup> Justinian's recital in Cod. 4, tit. 20, p. 16.

The Roman law affected a number of witnesses.<sup>a</sup>

One witness, whatever his position, was not allowed even to be heard.<sup>b</sup>

The number varied with the cause.

Sometimes there should be three, sometimes five.<sup>c</sup>

But whatever the required number might be it was essential to the case set up, and without it the case failed.

The accused was allowed the privilege of obtaining the rejection of a witness by showing a just exception against him, *e. g.* that he was *publico judicio damnatus*, bribed, infamous in character, or the like.<sup>d</sup>

If such an exception was proved, the witness was not called.

The law required that the conviction should be upon the agreement of the witnesses. Constantine says, "Omnium qui tormentis vel interrogationibus fuerunt dediti, in unum conspirantem concordantemque rei fine convictus sit: et sic in objecto flagitio deprehensus, ut vix jam ipse, ea quæ commiserit negare sufficiat."<sup>e</sup>

The proof adduced before the judge instructed his conscience. "Si nulla probatio religionem cognoscentis instruat," says a legal authority.<sup>f</sup>

Still he was free to use his judgment conscientiously: "Verumtamen quod legibus omisum est, non omittetur religione judicantium, ad quorum officium pertinet, ejus quoque testimonii fidem, quod integræ frontis homo dixerit perpendere," says another great authority.<sup>g</sup>

In both the procedures, the civil and the public, there were preliminary oaths taken by each side, the plaintiff and defendant, the prosecutor and accused.

In the civil suit it would seem to have been optional for the plaintiff to put the defendant to his oath. But if he did so, he in turn was compelled to take the oath of calumny.

In the criminal proceeding the prosecutor was obliged by law to take the oath in all cases.<sup>h</sup>

I think that the foregoing evidences will identify the Anglo-Saxon procedure,

<sup>a</sup> Dig. 22, tit. 5, p. 1, § 2; *ibid.* p. 12, p. 3, § 2.

<sup>b</sup> Cod. 4, tit. 20, p. 9.

<sup>c</sup> Cod. 4, c. 20, p. 15.

<sup>d</sup> Dig. 22, tit. 5, p. 3, § 5.

<sup>e</sup> Cod. Theod. 9, tit. 40, c. 1.

<sup>f</sup> Dig. 48, tit. 18, c. 1, pp. 17.

<sup>g</sup> Dig. 22, tit. 5, c. 13.

<sup>h</sup> Domat, vol. i. p. 452 (Strahan's translation), and Dr. Smith's Dictionary. See also Dig. 12, tit. 2, p. 34.

civil and criminal, with the Roman, and in so doing will show that the Anglo-Saxon criminal oath was a transmission of Roman law.

If this be so, it only remains to show that the Anglo-Saxon oath, which was the same as the Anglo-Norman,<sup>a</sup> contained the germ of the later English jury.

The points of identity are these :

The Anglo-Saxon oath is the *venue*, that is, the persons who are to give it come from the vicinity of the crime and the criminal, and for that reason should know the whole truth of the matter. This would be particularly the case in ages when locomotion was always difficult and sometimes prohibited.

They are the peers of the accused.

They are compulsorily summoned by the sheriff.

They swear to a result.

This result determines the fact at issue, binds the Court, and must be accepted by them.

These substantial resemblances being coexistent in each, there only remained for the Anglo-Saxon oath one point of development, and the jury, as we understand it, would rise into legal existence. The oath should lose its obligation of giving testimony, exchanging it for the privilege of expressing its collective view upon the fact at issue.

This could not be accomplished until witnesses were produced and examined before the persons who composed the oath. When that was done the English jury was created. Still establishers of fact as before, they thenceforth exercised their function judicially, not as privileged witnesses having a prerogative of testimony.

When this change occurred is not precisely known.

We only know clearly to whom that change is due.

The acute Norman, with the finest legal mind since the days of the Empire, had seen some, though possibly not all, of the advantages concealed under the "lad," and from a purgation converted it into a trial.

To him we are indebted as well for the word as for the development of the proceeding.

<sup>a</sup> See *Liber Albus* (Riley's edition), pp. 56, 57, 58.



XII.—*On Four Letters from Lord Bacon to Christian IV. King of Denmark, together with Observations on the part taken by him in the Grants of Monopolies made by James I.* By SAMUEL RAWSON GARDINER, Esq.

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Read February 7, 1867.

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THE copies of the four Letters from Lord Bacon to Christian IV. of Denmark, which I have the honour to lay before the Society of Antiquaries, were furnished to Sir Charles Murray, the British Minister at Copenhagen, by M. Wegener, the chief of the Royal Danish Archives, in consequence of an application made to the Foreign Office on my behalf. I can hardly be wrong in bespeaking the thanks of this Society, and of all who honour the memory of Bacon, for those whose ready attention to the request thus made to them has placed us in possession of these papers; and I may be allowed to mention that, although my application, being based upon a copy of an originally imperfect catalogue, only referred to a single letter, M. Wegener did not content himself with a mere literal fulfilment of the request made to him, but at once sent copies of every letter of Bacon's preserved in the Archives.

The letters themselves do not contain anything that is positively new;<sup>a</sup> it could hardly be expected that they should, addressed as they were to a foreign sovereign. Yet there is in them enough to be worthy of the attention of any one who feels a special interest in Bacon's biography.

The first letter was written at what may be termed the culminating point of James's reign. At his recent recovery from severe illness all London had poured out to Paul's Cross to return thanks for his restoration to health. Abroad, his policy was apparently triumphant. In the winter the preparations in the Spanish dockyards for fitting out the fleet, of which the rumoured strength terrified all Protestant Europe, had been stopped, or had been supposed to have been stopped, by his menaces. His mediation in the Bohemian war had been sought for by the King of Spain; Doncaster had left England on that conciliatory mission which was to satisfy all parties, and to find a common term of agreement

<sup>a</sup> They are printed in the Appendix to this communication.

between Ferdinand and the Directors. Three months were yet to pass before James learned how completely he had been duped.

Written under these circumstances Bacon's letter breathes a spirit of contentment which stands in strange contrast with the scenes of failure and disgrace which were to follow. Behind him is the mourning for the Queen's death, his own ill-health, and the King's. Before him is the constant labour, "the duties of life which are more to me than life itself," the King's recovered strength, the bright promise of the Prince's early manhood, and of the increasing family of the Electress Palatine. Above all, his mind rests with satisfaction on one point, on the financial and administrative reforms of the past year.

These reforms do not deserve the oblivion into which they have fallen. They go far to explain what has seemed to be so great an enigma, the devotion which Bacon always professed towards Buckingham. The scandalous side of the history of this year has been well preserved. There is no difficulty in learning as much as we please about the impudence of Lady Roos, or the avarice of Lady Suffolk. All who care to know anything about these times know that in the spring of 1618 one Howard was Lord High Treasurer, that another Howard was Lord High Admiral, that the son-in-law of a Howard was Master of the Wards, that one dependant of the Howards was Secretary of State, and that another dependant of the Howards was Attorney-General. They also know that within a twelvemonth every one of these, with the exception of the last, was driven from office, and that some of them had been brought, upon criminal charges, before the Star Chamber. But few, excepting those who have made a special study of this period, are aware that this was anything more than a personal victory of the splendid favourite. Yet it is certain that Buckingham, profuse as he was in his own habits, claimed, and justly claimed, the distinction of being the champion of economy in the State. At Michaelmas 1617, when Suffolk was still Lord Treasurer, it was thought much that there was likely to be almost a balance between the ordinary revenue and the ordinary expenditure.<sup>a</sup> At Michaelmas 1618 the new Commissioners of the Treasury were able to look forward to what was, for those days, the magnificent surplus of £45,000 to meet unforeseen expenses. Nor was the difference caused by the imposition of fresh taxation. It was brought about by sheer reduction of expenditure. The expenses of the household, which two years before had been in round numbers £80,000, were now brought down to £52,000. The extravagant Hay had been bought out of the Wardrobe, and the £20,000

<sup>a</sup> Lansdowne MSS. 165, fol. 287. State Papers, Dom. cx. 35.

which the change cost the King became an admirable investment through the savings effected by his successor Sir Lionel Cranfield, the most diligent and parsimonious of administrators. But the most striking change was effected in the navy. Nottingham, the Lord High Admiral, had lived too long upon the glories of the victory over the Armada. For the duties of his post he was, now at least, altogether incompetent; yet as long as the Howards were in power it was impossible to shake him. He had found little difficulty in setting aside the report of the Commission which had examined into the state of the navy in 1608, and he had been equally successful in preventing altogether the appointment of a fresh Commission in 1613. But the time was now come when no Howard, however faultless, could hope to retain power. It was impossible for him to resist inquiry any longer. The English navy, under his administration, had become a laughingstock to foreign nations; it was not that money had been spared; yet, though the expenses of the fleet were yearly increasing, its efficiency was not maintained.

A commission of inquiry was at last appointed. After a lengthy investigation its report was given in. Of the forty-three vessels of which the navy was nominally composed, nearly one-half were unfit for use, and were with difficulty kept from sinking by incessant repairs. The whole administration of the Admiralty was utterly disorganised. It sometimes happened that extensive repairs were taken in hand, and that it was only after large bodies of labourers had been engaged that it was discovered that the necessary materials had not been provided, or that the officials were left without money to carry on the works. Unsound timber had been paid for as if it had been in the best condition. Far higher prices had been given for stores than any private purchaser would have cared to pay. Incorrect entries in the books were of frequent occurrence. Ships were sometimes ordered round to Deptford for repair, and it was only after the expenses of moving them had been incurred that it was discovered that they were so rotten that it was not worth while to patch them up. The root of the evil lay in the appointment of officers at high salaries who did little or nothing, whilst the inferior officers who did the work were left either to plunder the Crown or to starve. In fact, this part of the report only expressed in sober and official language what was perfectly well known to every one who lived near the dockyards. Long afterwards Bishop Goodman used to tell how a friend, with whom he was walking at Chatham, drew his attention to the stately mansions which had sprung up, like mushrooms, round the yard. "All these goodly houses," he said, "are



built of chips.” The explanation of the riddle was that chips were regarded as the perquisites of the officials.<sup>a</sup>

To their report the Commissioners appended a calculation that for some years the expense of the navy had been no less than £53,000 a-year. They added that they were ready to meet all the ordinary expenses, and, in addition to build ten new ships within the next five years, for less than £30,000 a-year. The navy would then consist of thirty large vessels, besides a few small craft. It is true that the number of vessels left by Elizabeth had been forty-two; but the fleet of 1603 had measured only 14,000 tons, whilst 17,000 would be the tonnage of the fleet promised by the Commissioners.<sup>b</sup>

By itself such a report, coming as it did from men who were entirely under Buckingham’s influence, would not be worth much. But we have the best of evidence that there was something more in it than mere words. Nottingham was induced to resign—for a consideration. Buckingham was always delighted to see other people slaving as hard as they could, provided that he got the credit of their labours. So, as soon as he was appointed Lord High Admiral, the commission of inquiry was converted into a permanent commission of management.<sup>c</sup> Its members kept their promises. The money was actually saved. The ships were actually built. Whether it was worth while to fit out a fleet for the expeditions to Algiers, to Cadiz, and to Rhè, is a question with which we need not concern ourselves here. But, when we are inclined to criticise too harshly Bacon’s language towards Buckingham, these things should not be forgotten.

It is from these reforms that Buckingham’s strongest hold on power dates. It was then that his unprincipled mother was raised to the peerage. It was then that the King conferred upon him the estate at Wanstead, which was afterwards counted too little for his magnificence. All who whispered the slightest word against the almost royal power which was placed in his hands only wasted their breath. It had been expected that when he became Lord High Admiral, he would resign the Mastership of the Horse, and some of those who had hoped to step into the vacancy thus created hinted pretty intelligibly to the King what their opinion was. James contented himself with composing in reply some Latin verses, in which he urged that as, in the classical mythology, Neptune who pre-

<sup>a</sup> Goodman’s Court of King James, i. 53.

<sup>b</sup> Report of the Commissioners, &c. State Papers, Dom. c. 2. ci. 2, 3.

<sup>c</sup> Original Commission, June 23, 1618. Patent Rolls, 16 Jac. I. part 1. New Commission, February 12, 1619. Patent Rolls, 16 Jac. I. part 3.

sided over the sea was also the patron of horses, it was unreasonable to object to the continued supervision of the new admiral over the royal stables.<sup>a</sup>

Before the first of the three remaining letters was written by Bacon, the Palatinate was threatened. Before the last was written, it had been actually invaded. So little is on record of Bacon's feelings with respect to the great question of foreign policy of the day that every line is of value. And, if I am not mistaken, short and formal as these letters are, they contain, in the thought twice repeated in different language, the keynote to all that Bacon would have had to say upon the matter. On the 28th of March 1620 he expresses his hope that God will direct everything "in ejus gloriam et religionis stabilimentum, et per quem effusioni sanguinis Christiani maximè parcatur, atque ut tales in eâ sint partes Regis nostri et Majestatis vestræ quæ honores vestros, et salutem, necnon amplitudinem regnorum vestrarum maximè cumulare et illustrare possint." On the 19th of November he praises Christian because "cum . . . bellicâ virtute floreat, pacis tamen cultorem se profitetur; rursus sub ipsâ pacis mentione, veræ religionis patrocinium anteposit." It is as if he would have said: "Let our first object be the safeguard of religion; our second object peace; then, if this be impossible, let us look for military glory." It is impossible not to think of the passage in the "Novum Organum," in which an analogous, though not precisely similar idea is expressed:—

"It will perhaps be as well," he there writes, "to distinguish three species and degrees of ambition. First, that of men who are anxious to enlarge their own power in their country, which is a vulgar and degenerate kind; next, that of men who strive to enlarge the power and empire of their country over mankind, which is more dignified but not less covetous; but, if one were to endeavour to renew and enlarge the power and empire of mankind over the universe, such ambition (if it may be so termed) is both more sound and more noble than the other two."<sup>b</sup>

<sup>a</sup> Buckinghamus, io ! maris est præfectus, et idem  
Qui dominatur equis nunc dominatur aquis;  
Atque inter superos liquidas qui temperat undas  
Neptunus, celeres et moderatur equos.  
Ne jam displiceat cuiquam geminata potestas  
Exemplum superis cum placuisse vident.

Salvetti's News-letter, November 20, 1618.

The British Museum is to be congratulated on the acquisition of these valuable News-letters, which reach from 1616 to 1636.

<sup>b</sup> Novum Organum, i. Aph. 129.

In Bacon's mind, then, the highest ambition for the individual was the hope of enlarging man's empire over nature; for the statesman, it lay in the fulfilment of duty in using the forces entrusted to him in defence of religion, whenever an unfortunate necessity should call upon him to exert his powers. For a nation as for an individual, he held that "*officia vitæ sunt vitâ ipsâ longè potiora.*"

Of the two depositions against Bacon<sup>a</sup> I have little to say. They are unimportant in themselves, and are, unhappily, the only fragments left of a series which would be of inestimable value to any student of Bacon's political conduct. The case of Hody is one in which the present was given after the decree; and the deposition in which his gift is spoken of is only valuable so far as it raises suspicions of the veracity of Sir Thomas Perient, a man whose single testimony was accepted by the House of Commons in 1624 as conclusive against the Registrar Churchill.<sup>b</sup> The other deposition proves nothing against Bacon, but it throws a gleam of light upon his followers. Sir John Kennedy's petition<sup>c</sup> gives us a glimpse into the state of mind in which he presented the notorious cabinet, and it also shows the prevalence of a belief in the accessibility of the Chancellor's servants to corruption.

And here I might close my remarks, if it were not that I have lately met with some documents which bear indirectly upon Bacon's character.

✓ From some cause or other those writers who have taken up Bacon's defence have said as little as possible about his share in the patents and monopolies which led to the outcry with which Mompesson and Michell were assailed in the third Parliament of James I. Yet a little consideration will show that it is here that the knot of the question is to be found. Let us turn over as much as we please the existing evidence relating to the gratuities which he received as a judge, we shall hardly get further than a confirmation of Bacon's own sentence upon himself. "I . . . confess," he said, "that I am guilty of corruption." He had done that which a judge ought not to do. He had done that which justified the sentence of the House of Lords. If history is to modify in any way that sentence, it will not be by disputing the facts upon which it was based, or the inferences which were drawn from them; but by dealing with the question in the spirit in which, in Bacon's time, the court of equity dealt with the judgments of a court of common law, namely, by opening up new ground which has not been touched before.

<sup>a</sup> See Appendix, where they are printed.

<sup>b</sup> Nicholas's Notes of Proceedings in 1624. March 17. State Papers, Dom. clxvi.

<sup>c</sup> See Appendix, where this petition is printed.



It will have to show, not that Bacon did not do corrupt things, but that he did corrupt things without being himself corrupt. It will proceed, in short, upon an appeal to character.

Into this question it is not my intention to enter at present. But I would ask whether any such appeal to character can be listened to for an instant, if the popularly-received account of his connection with the patents and monopolies is allowed to stand?

With that strong common sense which never deserted him, Lord Macaulay pointed out long ago that it is puerile to acquit Bacon of whatever guilt attaches itself to the monopolies. Many of them passed the Great Seal when it was in his hands. Some of them were backed by his recommendation; and the most unpopular of them received his thoroughgoing support at a time when others were hanging back through fear of popular clamour. If he really thought as badly of them as the House of Commons thought of them, Pope's notorious line is true to the letter. He can only be regarded as, in very fact, the "meanest of mankind."

What the popular idea of this period of history is may be fairly looked for in Lord Macaulay's Essay: James, he tells us, "resorted without scruple to the most illegal and oppressive devices for the purpose of enabling Buckingham and Buckingham's relations to outshine the ancient aristocracy of the realm. Benevolences were exacted. Patents of monopoly were multiplied. All the resources which could have been employed to replenish a beggared exchequer at the close of a ruinous war were put in motion during this season of ignominious peace." This is, in all probability, precisely what nine-tenths of those who read history believe. Yet in the whole passage there is not a single word of truth. The benevolence of 1614 may, in some sort, be said to have been exacted. But it was collected and spent before Buckingham rose to power. In the winter of 1620 a benevolence<sup>a</sup> was asked for from the nobility, the high officials and the City of London. But many who were asked refused to pay, and no ill consequences followed. Whatever its character may have been, it did not replenish the exchequer. It was paid over to Sir Albert Morton, and was carried by him to the Palatinate. All that Buckingham had to do with the matter was, that he paid down £1,000 towards it.

<sup>a</sup> It is just possible that Lord Macaulay may have been thinking of the contribution of the summer of 1620. But this was a private collection paid to Dohna which the Crown permitted without taking any share in its levy.

It is equally untrue that the exchequer was greatly enriched by the patents. In the estimates for the year 1618-19, the profits of the whole number are set down at the modest sum of £1,883, out of which £1,000 accrued from the glass patent, which was specially exempted from abolition by the Monopoly Act of 1624.<sup>a</sup> It cannot be proved that a single penny from these sources went into Buckingham's pocket, nor do there seem to have been any rumours at the time charging him with making any personal profit in this way.

The only point in the charge which has any foundation whatever in fact is that which relates to Buckingham's relations. Buckingham's half-brother, Sir Edward Villiers, undoubtedly received a guarantee of a pension out of the monopoly of gold and silver thread. But this pension was nothing more than a fair dividend upon the money which he had actually invested. Whether he was paid or not we do not know. But we do know that, though a pension of £800 a year was secured upon the same monopoly to Christopher Villiers, the whole affair turned out so badly that in reality he received no more than £150 during the whole existence of the monopoly.<sup>b</sup> An uncertain sum was also reserved to Christopher Villiers out of the patent for alehouses. Lord Purbeck, the remaining brother, received nothing.

To say the least of it, it seems unlikely that even a man of Buckingham's giddy and arrogant character should have pushed on scheme after scheme, against the real opinion of wise counsellors, for the sake of getting so little.

If we wish to know what the views of the Government really were we must look to their official declarations. No doubt there is much that is not to be learned there. We shall not meet with anything to tell us what were the personal motives of influential persons. But if we find a large number of such declarations proceeding during a long course of years from a considerable number of officials differing in character, in position, and in political opinion, we at all events are able to examine whether they contain indications of a settled policy, or whether they are merely makeshifts put forth from time to time in contradiction to one another. When this has been done we can proceed to inquire whether, if such an agreement in principle be discovered, it is one which was likely to have been honestly adopted by honest men.

It would, unfortunately, be impossible to give here even a general idea of the nature of the forty or fifty grants recalled in 1621. I can only state that my impression, after an examination of them as they stand upon the patent rolls, is

<sup>a</sup> Estimate of Revenue, 1618-19. State Papers, Dom. cx. 35.

<sup>b</sup> Dike's Examination. Proceedings and Debates in 1620-21, i. 127.

that, though they are full of faults according to the ideas of the present day, and not without grave errors leading to abuses which speedily recoiled upon their authors, these grants are, taken as a whole, an expression of a definite commercial policy, bearing frequently the impress of Bacon's mind, and by no means the mere makeshift contrivances for extracting money from the purses of the subjects which it has now for two centuries and a half been the fashion to represent them.

It will be sufficient for our purpose to subject to examination two of the most notorious of the patents—the patent for inns, and the patent for gold and silver thread. They may be taken as fair representatives of the two classes of these grants; the one encroaching upon the jurisdiction of the justices of the peace, the other conferring a commercial monopoly.

The patent for inns was, as is well known, the result of a project of the notorious Sir Giles Mompesson. In 1621 Sir Giles declared that the scheme, being first brought forward when Bacon was Attorney-General, was referred to him for his opinion, “who returned it to the King that he desired not to doe it single, and that thereupon his Ma<sup>tie</sup> referred it for matter in lawe to the said Attorney, the Lord Chief Baron,<sup>a</sup> Justice Crooke, Justice Nicholls, and, he dying,<sup>b</sup> to Justice Wynch in his roome; and the said Sir Gyles confessed that the said nowe Lord Chancellour, with the Judges aforesaid, made certificate thereof to the King, which he said was by word onely, and not in wryting. And confessed that for pointe of conveniencie his Ma<sup>tie</sup> refered it to the Earle of Suffolk, then Lord Treasurer of England, the now Lord Treasurer, Mr. Secretary Winwood, Sir Thomas Lake, and Mr. Sergeant Finch;<sup>c</sup> and, if they thought it fitt, then to have a booke drawne upp, which was thereupon donne accordinglie.”<sup>d</sup>

The ostensible reasons by which the referees were convinced may be learned from the preamble of the patent itself:—

“Forasmuch,” it runs, “as great disorders groweth by the abuse of innes in this our realme, and where we are informed that sithence the fifte yeare of the raigne of our predecessor Edward the Sixte, late Kinge of England, dyvers and sondry persons have taken upon them of their owne heade and without anie lawful authority to keepe innes, or houses in the nature of innes, which weare

<sup>a</sup> Tanfield.

<sup>b</sup> Compare Bacon to Buckingham, October 18, 1616. Works, ed. Montagu, xii. 486.

<sup>c</sup> Sir Henry Finch.

<sup>d</sup> Charge of the Commons against Mompesson, March 8, 1621. House of Lords MSS.



not innes before that tyme; whereby they have incurred the daunger of lawe, and are by the due course of the lawes of this our realme to be suppressed and putt downe from keeping of a common hostery or inne, and yett, nevertheles, mannie of the said persons are meete and convenient to keepe innes and dwell in howses and places fitt for itt; of whom many, knowing the daunger, have made suite for our grace and licence, and the reste itt is like will be desirous of the like grace and safetie; and because the authority of Justices of the Peace extendeth not to the licencing of innes and common hosteries, and that the Justices of Assize by reason of theire other manyfolde ymployments and the shorte time whereunto they are confyned in theire circuitts cannot have leizure to take sufficient information whoe may be fitt persons for such licences to be granted to them; Wee, therefore, &c.”<sup>a</sup>

The patent goes on to say that the King grants to Sir Gyles Mompesson, Gyles Bridges, and James Thurburne, authority to take a survey of all the inns in the kingdom, and to inform themselves of the due keeping of the assizes of bread and horsemeat, and to treat with such as desired to keep inns, being men of substance and honest life, and thereupon to draw up a licence with a yearly rent reserved to the Crown. This licence was to be under the hand of Mompesson, and at least one other commissioner, and under the seal of the office. It was to be presented to the Justices of Assize, or, if it referred to a place to which they did not come, to the Chief Justice. Unless the Justices pointed out that the proposed innkeeper was a person of ill-fame, they were bound to sign the licence; and for additional security the innkeeper might have, if he wished it, his licence confirmed under the great seal. The justices were to have five shillings for each signature. The rents were to go to the King, excepting that each commissioner was to have £100 a year for his trouble, with an additional £100 to Mompesson as receiver of the rents and fines.

This patent, as is well known, was one of those which Ellesmere in his last illness refused to pass; and it has been supposed that his objections were based upon legal and constitutional grounds. Yet it cannot be said that this conclusion is warranted by any evidence which has reached us.

The story, as told by Chamberlain,<sup>b</sup> is as follows:—“The Lord Euers, late President of Wales, hath agreed with the Lord Gerrard for that place, and, though the Lord Chancellor made greate meanes to settle his sonne Sir John

<sup>a</sup> Commission to Mompesson and others, March 3, 1617. Patent Rolls, 14 Jac. I. part 22.

<sup>b</sup> Chamberlain to Carleton, March 8, 1617. State Papers, Dom. xc. 105.

Egerton there, yet by the favor of the principall verbe in covt, the Lord Gerrard hath carried yt, which with some other accidents (they say) hath driven the old Lord into such a melancolie, that he is wearie of the world, and hath made many means to the King to be discharged of the great seale; and so between sicke and sullen hath kept his chamber ever since the end of the terme; withall (some say) he had vowed never to set the seale to two patents that were sent him, the one for the sale of woodes, the other for some ymposition upon ynnes. So the King seeing all things of that nature to stand still by reason of his sicknes, went to visit him on Wensday, and in his presence causd that patent of woode to be sealed, and on Thursday sent for the great seale by the Earle of Buckingham and Secretarie Winwood, and presently sealed the other patent to one Monparson, a kinsman or allie of the Earle of Buckinghams. And yesterday morning, after he had ben abrode at Maribone parke, and before his going to Tiballs, delivered the great seale to Sir Fra. Bacon, and made him Lord Keeper."

In a letter written a few days later, it is said that the Chancellor, "when the King would not receave" his petitions to surrender his place, "began to refuse all things that were sent him from the King to seale."<sup>a</sup>

It is plain that, even if we accept Chamberlain's hearsay evidence that Ellesmere specially objected to seal these two patents, we are yet a long way from the inference that he entertained any settled constitutional objections to them. It is difficult to see how he could have objected on such grounds to the patent for the sale of woods. On the other hand, nothing is more natural than that, worn out and weary as he was, he should have felt it necessary to make a stand somewhere, and to say that he would no longer put the seal to these patents, the nature of which he was totally unable to take into consideration.

The remainder of the history of this patent may best be told in the language of the House of Commons:—<sup>b</sup>

"Sir Gyles Moumpesson, not content with the former fees rayased out of the purse of the subject, within sixteene dayes after obteyned another patent from his Matie, bearing date the nyneteenth day of March, 14 Ja.:<sup>c</sup> wherein after recitall of some parte of the former letters pattents, the king's Matie, in regard of the attendance of Sir Gyles in settling the buisines and for other consideracions, grants a fift parte of the proffetts to Sir Gyles Moumpesson and to Thomas Moumpesson for their lives and longer liver; and the said Sir Gyles, finding that he had noe ground by the former

<sup>a</sup> Gerrard to Carleton, March 20, 1617. State Papers, Dom. xc. 135.

<sup>b</sup> Charge against Mompesson, House of Lords MSS.

<sup>c</sup> Grant to Thomas Mompesson (Sir Gyles's brother) and Gyles Mompesson, March 19, 1617. Patent Rolls, 14 Jac. I. part 7.

letters patents to drawe that proffett he expected out of the ould innes, therefore of purpose to worke his advantage of them also obteyned a Third patent,<sup>a</sup> bearing date the fowrth day of November in the sixteenth yeare of his highnes Raigne of England, wherein is recited that the lawes made in the tyme of King Richard the second and King Henry the fowrth, though they remayned in force, yett considering the tymes when they were emanated, and the alteration of prices and difference of money sithence happened, have outworne the originall equitie and proportion that they cannot be observed without the extreeme prejudice and almost undocing of ostlers, and yet are subject to popular informacions, and thereby power is granted of assessing the reasonable rates for horsemeate to be observed by such inholders as shalbe lycenced by the said commissioners to keepe innes and to none other, as by the said lettres patents, relacion thereto had, more at large appeares.

And the next moneth after the said Sir Gyles Moumpesson procured a warrant under the privy scale bearing date the nyneth of December, 16 Ja.<sup>b</sup> to have allowance, &c. uppon his accompt of all such money as he had layd out or should laye out or disburse, in suite of lawe or otherwise, for or about the due execution of the commission, or erection of the office, or passing the accompt.

And the said Commons saide and shewed that by occasion of the said severall letters patents and warrants of Privy Scale our said Sovereigne Lord the King hath been deceived and abused, his loving subjects unduly vexed, disquieted, and empoverished, and his Ma<sup>ts</sup> justice blemished and discouraged.

For whereas it appeareth by the said letters patents 3<sup>o</sup> Martii, 14 Ja., that his Ma<sup>tie</sup> had been informed that sithence the fifth yeare of the Raigne of the late King Edward the Sixth diverse persons had taken uppon them of their owne heads and without any lawfull authoritie to keepe innes and howses in the nature of innes which were not innes before that tyme, and that thereby they had incurred the daunger of lawe, and were by the due course of his Ma<sup>ts</sup> lawes of this Realme to be suppressed and putt downe from keeping of a Common hosterie or inne, which was a motive that induced his Ma<sup>tie</sup> to make the said letters patents.

The said Commons said that keeping of an inne or hostery is a trade or misterie and free by the comon Lawe, and it is not a franchise, nor hath been so reputed to be. Nor cann the said Commons finde or be informed that in Eyer any such franchise hath been claymed, or any impeached by any writt for keeping of an inne, or that any license by any letters patents or charter, or other matters of Record, hath been granted in former tymes to keepe an inne or hostery, which would appeare if any had been necessary to be granted ; for that it is notorious and manifest that sundrie innes, and in some place almost whole townes, have been creeted sithence the tyme that the charters and letters patents of his Ma<sup>ts</sup> progenitors have been used to be inrolled, and are safely kept to our tymes, and that informacion was a noveltie and an attempt to introduce a newe lawe without common assent of the Peeres and Commons ; and the like noveltie by example of this might be introduced to extend to carryers, milners, shippers, smythes, and other trades and misteries, which are free and noe statute lawe of restraunte, but onely that in some cases

<sup>a</sup> Special Commission to Chief Justices Montague and others, November 4, 1618. Patent Rolls, 16 Jac. I. part 16.

<sup>b</sup> December 9, 1618.



none should exercise them but that had been an apprentice seaven years. And the letters patents made the fowrth day of November in the said sixteenth yeare of his Ma<sup>ty</sup> raigne are alsoe against the lawe, for that they conteyne a power to Sir Gyles Moumpesson to dispence with penall lawes, and yet none are dispenced with but those to whome he shall give licence to keepe innes, which is but a meanes to encrease the number of those that are to keepe innes for his owne private advantage.

The inconveniences by both these patents comming to his Ma<sup>ty</sup> people are diverse. By the former it ministreth an occasion of much vexacion to the people by suites in lawe, especially seeing that one of the patentees, that is Sir Gyles Moumpesson, is invited unto it by the letters patents, dated the nyneteenth day of March, in the said fowerteenth yeare, by being rewarded with a fifth parte, which must occasion him to attempt suites against all, whether newe or ould, without respect, thereby to enforce them to yeald fynes or some meane composicion, which they were better yeald then stand out a suite. It is an occasion of an encrease of unfitt innes and disorder in innes, rather then a reformation, for that such patentees, seeking after their proffett, will extend their power to lycence all those that will give fynes, of what condicion soever; and if keeping of innes should be a franchise, as it is not, the power of granting such lycence had been a regalitie which it is not convenient to be communicated to common persons. And by the former patent the justices of assize are commaunded to signe such licenses as Sir Gyles Moumpesson shall make of keeping innes, which is a blemishment of their estimacion; And it is inconvenient that any should have power to dispence in any sorte with any penall lawe, for when the same was made by common assent, it was well known that the Kinge might from tyme to tyme dispence with them, but the Parliament intended not to trust any subject with such liberty to dispence.

And it cannott be intended that Sir Gyles Moumpesson could inannage this great busines of soe large extent as all the innes in England and Wales, and become a generall inquisitor and surveyor of them as he sought to make himself.

Alsoe this patent counfounds the inferior government of the justice of peace, who may for some offences disable alekeepers for three yeares, that extends not to innekeepers; and by this patent he may sett upp the same men to be innekeepers over whome the justices of peace by the statute have noe cohertion by disabling.

And it appeareth by the said Letters Patents dated in the sixteenth yeare that it is inconvenient for the people that keepe innes to be prest to observance of the statute concerning horsemeate, for the reasons in that patent expressed. And soe is it, for by the statute of 13 R. 2, and 4 H. 4, the ostler may not sell or utter oates at more then one halfe penny uppon the bushell above the price at which he buyeth it in the market; And observing it noe man cann keepe an inne; for although a half penny was then a reasonable gaine (for it was then more than was the hyre of one mans labor by the daye, as appeareth by the statute of 12 R. 2), it is not nowe the twelveth parte of one mans wages. And if those statuts be inconvenient to be kept, it is inconvenient that the people should be forced to redeeme that inconvenience for money. If they were fitt to be kept, it is not convenient that any should be dispenced withal for money; for the lawes were not made to the intent that thereby others should be made more rich by offences.

And by this patent a general inconvenience is drawne unto all sorts of innekeepers; and it can be noe other but an invention to enforce all innkeepers, new and ould licensed, if any had byn, and not licensed to yeald fine for licenses and rents; for that those that trusting to the lawfulness

of their titles to keepe innes would otherwise refuse to take lycenses are now enforced unto it, or not to partake of the grace of being free of that statute.

The said Sir Gyles Mompesson, after the procurement of theis patents, bestirrs himself and omitts not to execute any ill that the patents did minister any occasion to him to doe, but doeth all those and worser things. For from Trinity Terme 15<sup>o</sup> Ja. to the end of Michmas Terme 17 Ja. he putts into processe as persons that kept innes without sufficient warrant <sup>a</sup>

In number - - - - -	3,120
Inforced to pleade - - - - -	500 and odd
Vexed without cause - - - - -	500 and odd
There were non-pross. entred - - - - -	200
Men outlawed and putt in exigent above - - - - -	1,000
Writts of error brought - - - - -	66
Twoc issues onely tryed - - - - -	2

And whereas many stood uppon their justifieacion, and would not take lycence, he caused an indictment to be prosecuted uppon the obsolete lawes wherein the promoters and informers had been sylent.

This he did against one to terrifie others; as he had donne uppon one tryall for innes where a justifieacion being made that the howse was an auntient inne, and upon evidence it fell out that longe since the house had been enlarged by buylding a part uppon another tenement.

<sup>a</sup> The notes of so much of Yelverton's defence on the 30th of April, 1621, as refer to this subject are as follows :—

“ Quo warrantos.

“ Never acquaynted with the patent in byrth or bringing upp, and had bene a starveling yf, &c.

“ Disliked as agaynst [?] the lawe and troublesome to the people.

“ A — ? moved to plead to itt. He stopped itt.

“ Mompesson challenged him for giving him the buffe, and sayd itt was the kinges jewell, and braved him, and sayd he would proceede uppon all the quo warrantos, and I should not dare to stop them, and challenged him to mete him before the King.

“ Roy. [?] Strayne not my prerog. agaynst any auncient right of my subjects, deale moderately.

“ Hereuppon Emerson brought me a message from Mompesson that he was not to keepe his place of attorney long yf he stopped these quo warrantos, and a while after Mompesson came with a message from my Lord of Buck. that yf he gave not waye to the quo warrantos he should not hold his place a moonth.

“ Hereby he thought much regall power assumed to place and displace officers.

“ So the Marques put him to itt in a strayte which to obey, either the Kyng or Buckingham; as stout as Mordachi.

“ These not halffe the attorneys but the clarkes, and of all he suffered but 2 to coome to tryell.

“ He enriched himselfe never by quo warrantos, and he gott but 30<sup>li</sup> by the nolo prosequi.

“ He fownd this message shortly after performed. Itt was penall, fatall, for any busines he had. The proffitts of his place turned thereuppon to one of my lords woorthies; by reason of his cedars above him, and by his shrubbs under him, he had no proffitt by his place.” House of Lords MSS. Compare Lords' Journals, iii. 121.

And concerning new innes : Whereas by the direccion of the letters patents he was to lycense none but such as were fitt, and not to misaplie the King's favor to people of base qualitie, and lose condiccion, he contrarywise having his eye uppon his proffett and not uppon the ease and good of the subject sett upp new innes by his lycence, without difference of person or place.

And namely, whereas one William Quick, an alekeeper within the county of Devon, was suppressed by the Justices of Assise, the said Sir Gyles notwithstanding the said suppression lycensed the said Quick to keepe an inne, and the better to coller his proceedings, a certifficat was made by Roger Preston and William Martyn in his behalf, and the words Justice of Peace was added by one Wilmote, clark to Sir Gyles, as the said Wilmote confessed before us, and the same was under written, approved by John Drake and other justices, whoe incensed the judges against him ; wheras the said Preston and Martyn were noe justices. And the said Sir Gyles wrott a letter to the said Mr. Drake, being in commission of the peace, and one of the Deputie Leiftenants of the said countie and now one of the knights of the said shire, taxing him for his hard usage to the said Quick, and that if respect of alliance had not restreyned the said Gyles Mompesson more than any other cause, he would certainly have used another course, as he had donne to other men in the like case ; and that if anything were donne by Quick contrary to the lawe, or that he kept a ryotous and disorderly house he should be ready to doe to him that which was not in the power of a justice of peace ; and that he might not give waye to the will of any justice of peace—to oppress the King's tenents ; that in strictness of lawe out of doubt an innekeeper had inclusively all power that an alehouse-keeper had, and by the said letter intreated the said Mr. Drake that he might not have cause to runne another course with him then as a kinseman and freinde, as by the said letter under the said Sir Gyles Moupesson's owne hand appeareth.

And whereas, in the countie of Southampton, by vertue of the said commission, threescore and seaven new innes have been licensed, it is manifest that seaventeene of them were such as had been putt downe by the sessions for abuses on the ale-houses; and amongst others, one Humfrey Wish suppressed, that dwelt at Minsted, in the New Forest, a harbourer of deare-stealers, and braved the justices that he would do it in despite; and one Richard Randall, convicted for keeping an ale-house at a bush on the highwaye, and an intelligence to roages and theives, and suppressed in sessions, was one of those soe licensed by Sir Gyles Moupesson's comission to keepe an inne, though Sir Gyles had notice of his suppression. And Sir Richard Tichborne, telling Sir Gyles Moupesson of theis abuses, Sir Gyles said unto him that he would be buisie until he complayned of him.

And in Buckinghamshire one Barton, putt downe in open sessions for felonies in his howse and other disorders, and his wife infamous, and entred suerties in open sessions in extraordinary somes to keepe noe more, yet afterwards obteyened lycence from the commissioners for an inne. And Gregorie Snowe, and King, putt downe by the justices, were sett up to be innes by the commissioners; and one Griffyn, that was chased out of Northamptonshire and dwelt in a wood in Buckinghamshire, and sett up an ale-house, and then, pursued by the justices, removed into the village of Waddesden, and there obteyened a licence from the comissioners to sett upp an inne there.

And in the county of Northampton one George Coo, of Cliffe, putt downe at a meeting of justices for harbouring theives and other disorders, within tenn dayes after sett upp an inn by



agreement with the commissioners, and past it under the scale of the office; and other ale-keepers, suppressed in the countie by the justices, obteyned lycences from the commyssioners.

And in Rutlandshire one Hubberd, an ale-keeper in Okcham, whoe disclaymed in a *quo warranto* sued against him, was brought upp to London uppon an attachment for a contempt grounded upon the affidavit of one Palmer, for enterteyning him after his disclaymer, and forced by Sir Gyles Moumpesson to pay the fees of the attachment, and Palmer's fees, and tooke a lycence and paid five pownds five, and 26s. for the scale of the office, all costing him 7*li.* 4*s.* 6*d.*

And, amongst many other abuses and oppressions of the said Sir Gyles Moumpesson and his instruments in the undue execution of the said patents, one Ferrett, an agent for Sir Gyles Moumpesson, came late in the even to the towne of Breewood in the countie of Stafford, to the house of one Cooke an ale-keeper, being a man aged above 80 yeares, and desired lodging; the other said he had kept an ale-house fiftie yeares but lodged none. Ferrett pretending the night came on, and for wante of lodging he might fall into the hands of theives, soe farr importuned Cooke for lodging that he said he should lye in his bedd, and he himself would sitt upp all night, and his horse should stand where the cowe stood, and she lye without doores, and he would provide an oate sheafe for his horse. "This is well," said Ferrett, "you are one of those that I looke for; you keepe an inne, you receive an horse and man: and served him with a tickett to appeare at London before his Ma<sup>ty</sup>s Commissioners for inns and hosteries;" and Cooke was enforced to send to London to petition for his discharge; and in diverse other countyes of the kingdome sondrie ale-keepers suppressed by the justices in open sessions were notwithstanding after sett up to be innes, by lycence from the commissioners.

Sir Gyles Moumpesson in the execucion of his commission hath offended in this, that where rents are reserved for lycence of keeping innes whereby the inne keepers are made in showe debtors to the king, there is noe record kept of this debt whereby to charge the farmours, as used to be of all farmours, but a remembrance is onely kept in a booke, soe as if the rent should be behende, it cannott be written for to the sheriffe; and noe meanes was left to leavy it, but by an universall course, to take the partic by messengers and pursevants, and when he is taken there is noe place where he may pleade any matters of discharge in forme of lawe, soe as this tends to the subversion of the lawe and the liberty of the people.

And the said Sir Gyles hath dealt fraudulently in this, that whercas he is to have allowance uppon his accompt for money to be layd out in prosecuting this busines, those against whom *quo warrantoes* were sued when they came to compound, as many would rather then undergoe a suite or be questioned uppon the obsolete lawes, he had costs of them alsoe,

And for ought appeares putt into his owne purse without accompt the charges of the licences, for he toke of some twentie and sixe shillings.

It will be seen that Bacon was not consulted as to the convenience of the patent of 1616. All he had to do with it was that, in conjunction with three of the judges, he pronounced in favour of its legality, in opposition to the view which was adopted by the House of Commons in 1621, and by the judges in 1624.

It is therefore advisable to know precisely what the point of law at issue was; and in so doing we must put Mompesson and his fellow-commissioners entirely

out of sight. In the eye of the law they did not license a single innkeeper. It was by the signature of the judges that the licenses were rendered valid. The new machinery was brought into existence for the purpose of supplying the judges with that information which they were themselves incapable of acquiring. The point, therefore, which the House of Commons assailed, was the right of licensing claimed for the judges. It was against the same point that the arguments of the judges were directed in 1624. On that occasion Chief Baron Tanfield urged "that innes were licensed at first and originally by the justices in Eyre. But all the justices were of a contrary opinion, and said that that was the ground that begat the patent to Mompesson, viz. that the King might license if the judges might."<sup>a</sup>

Yet it would seem that this view of the law was not held prior to the discovery of Mompesson's abuses. In 1611, Croke, who was afterwards one of Bacon's referees, delivered his opinion judicially that "no person is for to erect an inn without license from the King."<sup>b</sup>

Again, in 1618, it was "adjudged per totam curiam" of the King's Bench, viz. by Montague, Croke, Dodderidge, and Houghton, "upon evidence at the bar in a quo warranto against Harding, for the Bush at Farnham," that a man having an inn by prescription cannot enlarge his rooms upon adjoining land.<sup>c</sup>

Nor was this all. If there was one man in England who was likely to be opposed to Bacon on a legal question it was Coke. Yet Coke distinctly said,

<sup>a</sup> Hutton, Rep. 100.

<sup>b</sup> Bulstrode, Rep. i. 109. There is a petition extant, presented by a certain Peterson in 1607, which shows that the idea of the King's power to license was not first broached by Mompesson.

"There apperteyneth to the crowne the authorizing of all innes which are not lawfully authorized, which now yealdeth noe proffitt to his Ma<sup>tie</sup> and this by the lawe is the King's, as his Ma<sup>ties</sup> learned counsell can affirme.

"This will speedily yealde a great some of money, if some officer under the Lord were authorized to bringe in or to passe such grants under the chequer seale, which is greatly desired of the most part of the inkeepers, for that nowe at the present they are, and have bin a long tyme, greatly troubled in attending the justices of peace, whose authority by the statute reacheth no further then to call before them alehowse keepers, and to bynd them in recognizances, and not the inholders.

"If the inholders may obtain leases for their lyves out of the exchequer they will give money for yt; and their number is gret, and they will be gladd to be disburdened of the justices taxacions and impositions, and also of the promoters, who contynually enforme against them without authority.

"Theis inholders will enter into covenant, and give sufficient bonds in the exchequer for performance, to thend they may be at quiet and freed from impositions and troubles as aforesaid."—Add. MSS. 10,038, fol. 131."

<sup>c</sup> Viner's Abridgement, xix. 437, Art. Inns, sec. 9.

in the House of Commons, that the patent for inns was "good in law, but ill in execution."<sup>a</sup>

So far it may be said that a defence has been set up against the only charge which can be formally brought against Bacon. But there can be no doubt that he really approved of the whole proceeding. "I hear nothing," he wrote to Buckingham, when the patent was under consideration, "from Mr. Mompesson, save that some tell me he is knighted, which I am glad of, because he may the better fight with the 'Bull and the Bear,' and the 'Saracen's Head,' and such fearful creatures."<sup>b</sup>

In fact, the question between the Crown and the justices, so far as it was a political one, was only one phase of the great question between the central government and the local authorities, which at this period meets us at every turn. On which side Bacon's sympathies really lay it is impossible to doubt. But it is easy to forget, that whilst his action defeated itself through the misconduct of the officials in whom he placed his confidence, and whilst it is undeniable that it was of advantage to England that his policy was nipped in the bud, there were nevertheless grave inconveniences to be apprehended in handing over the unrestrained management of local affairs to the local authorities. In the action of the justices of the peace there was sure to be irregularity. In one place private jealousies, in another over-remissness or over-strictness, were likely to influence their conduct. We have, it is true, no general statement, other than that contained in the patent, of the views of the Government with respect to inns. But a quotation from a letter written by the King, upon a kindred subject, long before either Buckingham or Mompesson were thought of, will not be out of place.

"Being informed," he wrote in 1608, "of the excessive numbers of ale-houses, victualling and tippling houses within our realm, and of the great abuse in granting licenses for the same, and in setting them up and putting them down at pleasure upon suit and means made without due regard either to the number or the quality of persons so licensed, and that not without more charge to them than is warrantable, although the matter may seem to concern the meanest of our subjects, yet, inasmuch as we are answerable to God for toleration of disorders and vices, whether it be in great or small, specially where the care of our inferior and

<sup>a</sup> Proceedings and Debates, 1621, i. 65. This valuable collection, the writer of which has been hitherto unknown, is proved, by the fragments of the original notes preserved amongst the State Papers, to have been the work of Edward Nicholas.

<sup>b</sup> Works, ed. Montague, xii. 486.



subordinate ministers appeareth to be wanting, we have thought good by the advice of our Privy Council to take a course for a reformation in this behalf.”<sup>a</sup>

It may well be argued that the remedy which obtained Bacon’s support was worse than the disease, but it can hardly be said that there was no disease at all.

Compared with the objections which have been raised against the patent for Gold and Silver Thread, the objections against the patent for Inns sink into insignificance. In no other case were the abuses so manifest, and in no other case can Bacon’s participation in those abuses be so clearly traced. It is therefore not to be wondered at that we have hitherto heard more about it from writers whose estimate of his character is very low, than from writers whose estimate of his character is very high.

The first patent<sup>b</sup> was granted in 1611. It commences thus :—

“Whereas our loving subjects Richard Dike, Mathias Fowle, Humphrey Phipps, and John Dade of London, merchants, have undertaken and do undertake to establish and perfecte within this our realme of England, and for the service of the same, the arte, misterie, trade, or feate of making, beating, cutting, thredding, and spynning of gould and silver threed, and have begunne to use, exercise, practize, sett upp and putt in use the said arte, misterie, trade, or feate of making, beating, cutting, thredding, and spynning of gould and silver thread, within this our realme of England, in such manner and forme as gould and silver threed, commonly called Venice gold and silver threed, is or hath bene made, beaten, cutt, threeded, and spunne in Millaine, Naples, Florence, Bolonia, Italie, and France, or in all or any of them, which said arte, misterie, trade, or feate had not before bene used, exercised, practised, sett upp, or put in use within our said realme of England, and whereas the said Richard Dike, Mathias Fowle, Humfrey Phipps, and John Dade have already att their charge sett upp or praied to be sett up within this our said realme of England, and other our said dominions, divers frames, loomes, ingines, and other devises and meanes, and more will, for the better using, exercising, practising, setting upp, putting in use, and perfecting of the said arte, misterie, trade, or feate within our said realme of England, and other our said dominions, and doe likewise intende to teach and instructe, or to procure to be taught and instructed in the same arte or misterie, many of our people and subjects of this our said realme of England, and of other our dominions and countries, by meanes whereof the said gold and silver threed, which heretofore hath been brought into this our realme of England and other our domynions from forraine parts, may not only hereafter be made within our said realme and other our domynions by our owne people and subjects, but many of our said people and subjects may thereby be releevd, mainteyned, and sett on work. And forasmuch as the use, exercise, practize, and em-

<sup>a</sup> The King to the Mayor and Justices of Southampton, March 3, 1608. Cott. MSS. Tit. B. iii. fol. 1.

<sup>b</sup> Grant to Dike and others, June 5, 1611. Patent Rolls, 9 Jac. I. part 7. In Mrs. Green’s Calendar of State Papers, a docquet referring to this business is given, under the date of September 27, 1604. Its true date is 1614, and it refers to the second patent which will be afterwards mentioned.

ployment of our people in the said arte, misterie, trade, or feate is very likely in tyme to prove very beneficiall and comodious to us and to our said subjects and comon weale, as well by the learning, teachinge, and instructing of our said subjects in the said arte, misterie, trade, or feate, as alsoe in setting in work, releeving, and maynteyninge themselves by a trade not heretofore used. Know ye therefore," &c.

The patent goes on to grant these persons a monopoly of the manufacture during twenty years, and directs the Court of Exchequer to afford proper protection to the patentees.

There is some obscurity about the mode in which this patent was obtained. In 1621 Dike stated that the scheme had been proposed by Bradshaw and Lashett. Fowle said that Lashett had brought it to Lady Bedford.<sup>a</sup> On the other hand, Phipps and Dade are spoken of by the Commons in their charge against Mompasson<sup>b</sup> as being the trustees of a certain Broad, and yet Broad stated to the House of Lords that he had been himself the originator of the design, and had been cheated by Dike and Fowle.<sup>c</sup>

<sup>a</sup> Proceedings and Debates in 1621, i. 127, 128.

<sup>b</sup> House of Lords MSS.

<sup>c</sup> "The particular grievances and losses sustained by Fraunces Broade, thorough the unjust dealinge of Richard Dike and Mathias Fowles, are as followeth, viz.:—

1. First, the saide Fraunces Broade, having bin att greate charges for the procuring of strangers out of forraigne parts, to teach the art and manufacture of spyning of gold and silver threadd within this realme, to the value of 2,000<sup>li</sup>. att the least, was (after due examination, made by the Lords of his Ma<sup>ties</sup>. most ho: Privy Councill of diverse persons of severall trades using the said stuffe within this realme, of and concerning the necessitie and necessarynesse of the same to bee here made) offered by the said Lords a patent for the sole doieng thereof for certaine yeares; which hee then neglecting to accept, the said Fowles and Dike, knowinge thereof, entreated the said Broade that they might also have a dealinge therein with him, promising not onelie to paie him the said 2,000<sup>li</sup>, but to procure a patent for the same as well in the name of him, the said Fraunces Broade, as of themselves; which he giving waie unto, they procured the said patent, but in their owne names, leaving the said Broade out of the same, by which he lost the said . 2000<sup>li</sup>.

2. Secondlie, the said Fowles and Dike making shewe of a pretended partnership to bee between them and the said Broade (which was never perfected), not onelie gott from the said Broade the practize of makinge the said gold and silver threade, but a greate stocke of money, goodes, and tooles of his and his freindes, and many servants, strangers, which Broade had bin att cost with to fetch from forraigne parts, some of which are yet deepeleie indebted to the said Broade, whereby he lost the whole, to the value of . . . . . 1,000<sup>li</sup>.

3. Thirdlie, the said Broade hath, by means of the said Fowles and Dike, bin kept from work in his said trade by the space of three yeares or thereabouts, by which he lost att trade . . . . . 1,000<sup>li</sup>.

4. Fowerthlie, the said Frauncis Broade having, in May, 1618, delivered a petition to his Ma<sup>tie</sup>, in which he sett downe the premisses (amongst other things) desiring releife, It pleased his Ma<sup>tie</sup> to referr the whole busyness to the hearing and determination of Sir Henry Yelverton, K<sup>t</sup>, his then Attorney-Generall, and to

At all events there appears to be no doubt that it was through the influence of Lady Bedford that the patent was brought to Salisbury's notice, and for this service, according to Yelverton's statement, she received £1,000 from Dike and Fowle;<sup>a</sup> Dike, however, said that she received a sixth part of the patent.

It was not long before we find attempts made to infringe upon the patent. In 1613 and 1614 we find Sir Henry Montague, at that time Recorder of London, imprisoning offenders and taking away their tools.<sup>b</sup>

The attention of the council was accordingly drawn to the question. Both sides were heard, and a new patent<sup>c</sup> drawn up, which passed the Great Seal on the 10th of January 1616.

After reciting the concessions made in the former grant the patent proceeds as follows :—

“ And whereas, by virtue of the said graunts, they the said Richard Dike, Mathias Fowle, Humfrey Phippes, and John Dade, have sithence the making of the said graunte to theire greate charge and hasard both of theire lives and estates, broughte from beyond the seas divers skilfull and experte workemen in the said arte, misterie, trade, and feate, whoe by theire industrie and paines, and at the like charge and coste of the said Richard Dike, Mathias Fowle, Humfrey Phippes, and John Dale [sic] have since within this realme taught and instructed divers of this nation in the said arte, misterie, trade, and feate whoe are nowe experte in the same, soe as by

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Sir Thomas Coventrie, K<sup>t</sup>., his then Sollicitor, to end if they could, or to certifie his Ma<sup>tie</sup>. the state of the case and theire opinions; who upon open hearing in the presence of Sir Ed<sup>w</sup>. Villiers and Sir Nicholas Salter, K<sup>t</sup>., upon the voluntarie offer (for ending of all suites and controversies) of him the said Mathias Fowles, ordered that assurance should be given by the said Fowles and Dike, that the said Broade should from thenceforth onelie platt all the wyer into plate, which was to be used for the said purpose, att the rate of threepence halfe penny the ounce, which assurances were accordinglie drawne up by the said Sir Thomas Coventrie, but after refused to be perfected by the said Fowles and Dike. And yet the said Broade nevertheless still kept from worke in his said trade by the said Fowles and Dike, and the said Sir Henry Yelverton perswaded not to certifie to his Ma<sup>tie</sup>, as was required according to the said referrment, although Sir Thomas Coventrie was willing to have joyned therein with the said Sir Henry, if he would have certified; whereby the said Broade hath lost att the least att the rates agreed on as abovesaid . 2,000<sup>li</sup>.

5. Fiftlie, the said Fowles, sending for the said Broade to come to his house, and hee the said Broade then demanding of him the perfecting of the said bargaine, and telling him that otherwise he would worke again, the said Fowles not onelie imprisoned him by the space of an hower, but had like to have slaine him with his sword.

Read 26 Apr: 1621.

Ordered Broade to take his remedy by a due course of law.

House of Lords MSS.

<sup>a</sup> Proceedings and Debates in 1621, i. 120, 127, 138.

<sup>b</sup> Yelverton's relation, Proceedings and Debates in 1621, i. 120.

<sup>c</sup> Indenture between the King and Dike and others, January 10, 1616. Patent Rolls, 13 Jac. I. part 16.



their greate care, paines, labors, and endeavors the same is become verie profitable unto this realme, as well in setting divers poore people on worke, as alsoe in the spyning and working of silver and gould thredd, and copper gould and silver thredd, within this realme, which before was for the moste part brought from beyond the seas, soe as the same arte, misterie, trade, or feate is verie likelie in shorte tyme to become a native and setled trade within this realme. And whereas, of late tyme, since the graunting of the beforemencioned letters patents, Bartholomewe Honoras, Stephen Mounteage, Claudius Dorrell, and others, straungers borne oute of his Majesties domynions, did complaine unto the Lords and others of his Majesties moste honorable counsell, and informed them that the said arte, misterie, trade, or feate had been an auncient trade of long tyme used within this realme before the graunting of the letters patents. And whereas, the said Lords, and others of his Majesties moste honorable privie counsel, did thereupon examyne the truth thereof, and upon due examynacion did finde that the same arte, misterie, trade, or feate had been formerlie in handling and endeavored to be settled within this kingdome, but indeede had never been established and perfected within this realme nor constantlie or openlie used before the graunting of the said recited letters patents—”

The patent then proceeds to say, that the patentees had surrendered the former patent, and that Dike, Fowle, and Dorrington had covenanted, that the King should receive no loss in his customs, by reason of the cessation of importation, “which covenant, or the like, noe other man hath hitherunto entred into with his Majestie,” and “have already, and doe, likewise, intend to teach and instruct, or to procure to be taught and instructed in the same arte or misterie manie of his Majesties people and subjects of this realme of England, and of other of his Majesties domynions and countries. And forasmuch as by the meanes aforesaid, the said arte, misterie, trade, or feate is verie likelie, in tyme, to prove verie beneficiall and commodious to his Majestie, and to his said subjectes and common weale, and noe waies hurtfull to the same, Nowe, this indenture witnesseth,” that Fowle, Dike, and Dorrington might, for twenty-one years, conduct the manufacture, “in such manner and forme, as gould threed and silver threed, &c. is or hath been made, beaten, cutt, threaded, sponne, milned, flatted or drawne into wyer, in Millaine, Naples, Florence, Bolonia, Italie, and France, or in anie other place whatsoever, beyond the seas,” paying to the King £10 a year. No one else is to be allowed to made gold or silver thread. Writs are to issue out of the Exchequer to mayors, bailiffs, &c. to inquire after offenders. With the assistance of officers they may enter any shop or other place, and if resistance is offered are to certify the same into the Exchequer; in which court offenders are to be punished with fine, imprisonment, or otherwise, in accordance with law. Dike and Fowle, together with Francis Dorrington, who stepped into the place of Phipps and Dade, were to have for twenty-one years the sole right of “making, working, beating, cut-

ting, milning, and flatting," gold and silver thread. The words, "milning and flatting," had not been introduced into the former patent, and seem to have been intended to secure the grant from all possible competition.

In return, the patentees engaged to import bullion to the value of £5,000 every year, and to pay to the King a sum equal to the average yearly amount of the customs upon importation which he would lose by the growth of the domestic manufacture.

Such was the patent which was granted after long and serious deliberation at the council-table. For seventeen months, so Yelverton afterwards affirmed, "Ellesmere stopped itt; . . . but afterward, and upon proof it was a new invention, he passed it."<sup>a</sup>

It was upon the grant of this second patent that Sir Edward Villiers invested £4,000 in the undertaking.

It was thus, before Mompesson and Michell had ever been heard of beyond the circle of their own acquaintance, before Bacon had ever been asked his opinion on the subject, a monopoly was granted. If it was wrong to give any special privilege at all; if it was wrong to impose penalties upon those who engaged in competition; if, above all, it was wrong to allow any one of the name of Villiers to interfere in such matters, all these wrongs are included in the first two patents. It is, therefore, not unimportant to those who wish to know what Bacon's share in the matter really was, that they should understand, that, when these two patents passed the seal, the Great Seal was not in the hands of Lord Keeper Bacon, but in the hands of Lord Chancellor Ellesmere. Upon the 10th of January 1616 Bacon was not even a Privy Councillor. It is to be hoped, therefore, that we shall hear no more of those comparisons between Ellesmere's probity and Bacon's dishonesty, which have no foundation whatever in fact.

Before proceeding to consider the motives by which those who supported the grant of the patent were probably actuated, it will be perhaps as well to proceed a little further.

The business did not prosper. The goldsmiths, who had been heard at the council-table before the grant of the patent, still maintained their right to manufacture the article themselves. In April 1617 Sir Edward Villiers brought the grievances of the patentees before his brother and the King. On the 16th of April Buckingham wrote to Yelverton, the Attorney-General, requesting him to further the patent, for that it concerned his brother. About the same time the affair was commended by the King to the consideration of the council; and on the 25th of

<sup>a</sup> Notes of Yelverton's speech. House of Lords MSS.

April the council instructed Yelverton to lay an information in the Court of Exchequer against the offenders.<sup>a</sup>

Accordingly, in Trinity Term, Yelverton exhibited a Bill<sup>b</sup> against forty-two persons, one of whom was the Hugh Middleton who had brought the New River into London.

Of this Bill the more important portions read as follows :—

“ Sheweth and enformeth your Lordships, Sir Henrie Yelverton, Kt. his Majesties Attorney Generall, that whereas the new inventing and finding out of necessary and profitable artes and sciences, or the bringing into this realme from the partes beyond the seas of any such necessarie [artes and] sciences which have not before tymes beene used or exercised within this kingdome for wante of the skill or knowledge of the secrete or misteries thereof, is a meanes to sett the King’s subjects on worke, and to mayntaine and increase theire wealth and the wealth of the wholl [commonwealth here], by which his Ma<sup>ty</sup> by his royal auctoritie and prerogative is princepallie to take care of and to encorage, cherish, and reward the inventors and firste bringers into this kingdome of such artes and sciences, by privileges and immunities to them to be granted by auctoritie and prerogative royall as his Ma<sup>tie</sup> by the advise of his counsell shall finde to be good and beneficiall for the common wealth and good of this kingdome. . . .

Whereas the art of manufacturing gold thread, &c., is a necessary and profitable art “both for setting of great numbers of his Ma<sup>tie</sup> subjectes on worke, and for to mayntayne and increase theire wealth and the wealth of the kingdome, the true misterie and secretts of which arte was not before his Ma<sup>ties</sup> happy entrance into this kingdome, and verie latelie, knowen or practised as any continewed trade or misterie by any of the trade or misterie of the Gouldsmithes, nor by any of his Ma<sup>ties</sup> subjects within this kingdome, nor the said arte or misterie even before that tyme used or exercised as a trade within the same, and therefore his Ma<sup>tie</sup>” granted patents to Dike, Fowle, &c. who “having spent much tyme and greatesomes of money in the partes beyond the sea in attayncing to the knowledge of the said misterie, did before others sett up the said feat or misterie within this realme of England, and used the same comonly as a trade, instructing others therein.

“ And after the granting of the said letters patents Barthollomue Honoras, Stephen Mounteago, Claudius Dorrell and others, strangers, borne out of his Ma<sup>ties</sup> dominions, wyerdrawers, who had in former tyme attempted the makeing of the said thredd, but never understood the groundwork, which is spinning, being forbidden by the said letters patents, they did complayne unto the Lordes and others of his Ma<sup>ties</sup> most ho<sup>ble</sup> counsell, and enformed them that the said arte, misterie, trade, or feate had been an ancient trade of long tyme used within this realme, before the granting of the said letters patent. Whereupon the said Lords and others of his Ma<sup>ties</sup> most ho<sup>ble</sup> Privie Counsell, examining the truth thereof, upon dewe examinacion evidently found that the said arte, misterie, trade, or feate had beene formerlie in handling, and endeavored to be settled within this kingdome, but, indeed, had never beene established and perfected within this

<sup>a</sup> Notes of Yelverton’s case. House of Lords MSS.

<sup>b</sup> Bills and Answers in the Exchequer, James I. London and Middlesex, No. 1113.



realme, nor constantlie or openlie used before the granting of the said letters patents by any other then the said patentees, and those whom they set on worke; nor that the said wyer drawers had ever brought up any spinners to worke and make the same as it ought to be wrought." Dike and Fowle surrendered their patents "to the end that o' Soverayne Lord the Kinge should and might make the like grante for the consideracion aforesaid, and other consideracions hereafter expressed," to Richard Dike, Mathias Fowle, and Francis Dorrington. "Whereupon our said Soveraigne Lord the Kinge, considering that the said patentees during the said terme weare not likelic to reape proffitt answearable to their chardge and expence, was graciouslie pleased to grante the like privilege unto the said Richard Dyke and Mathias Fowle, and unto the said Frauncis Dorrington, who had allsoe beene at chardge in furthering the said misterie and use thereof within this realme, and was named allsoe at the request of the said first named patentees. And thereupon certaine indentures dated the tenth day of Januarie in the thirteenth year of his Maj<sup>ties</sup> raigne were made betweene" the King and the patentees, under the Great Seal, to bring in £5,000, and to pay a sum to be afterwards fixed in lieu of customs.

The patentees have "to their greate costes, chardges, and expenses of money, to the value of eight thousand pounds att the least, brought the said arte, misterie, trade, and feate, to perfeccion within this realme, and have taught and instructed diverse of this nation in the same, and enabled many hundred poore people to live by the exercise thereof. But now, soe it is, if it may please your Lordshipps, that one Thomas Williams and Thomas Ledsam, wire drawers of London, and now latelie made freemen of the Companie of Gouldsmithes of London, who have, upon the debating of the said matter before the Lordes of His Ma<sup>ties</sup> Privie Counsell, confidentlie affirmed and offered to depose, that the said feate or misterie was never before that tyme used in England, and divers others whose names His Highnes' said attorney knoweth not, but humblie prayeth that they may be hereunto inserted as defendents as they shall be knowne, have now neverthesse combyned themselves with sundrie gouldsmiths of London, and sondry others whose names are allsoe unknowne to His Ma<sup>ties</sup> said Attorney-Generall, and whome he prayeth may be made defendants to this bill as their names shal be discovered, and have animated and stirred them up to use and exercise the said arte, misterie, trade, and feate, of making of gould and silver thredd, untrewly pretending the same to belong and appertaine to the arte and mysterie of a gouldsmith." And he concludes by praying that subpœnas may issue against them.

To this bill many of the inculpated persons answered :—

Thomas Williams and others answered, that "the City of London is an auncient city," and that in it is a company of goldsmiths; that the art of making gold and silver thread was exercised by them before His Majesty's accession, and is a branch of their trade. That what the patentees pretend to have invented and brought in

is "in substance and workmanshipp none other but such like gould and silver thread which heretofore in auncient and later tymes was used, worne, and employed for making of embroidery and laces of gould and silver, guards and ornaments of gouldsmyths worke upon apparel and other vestures in this kingdome, made and wroughte within the same." The words used in the patent are mere technical names for part of the ancient well-known manufacture.

The art of drawing gold wire was anciently used in London, for at a Common Council in the City of London in October, 3 Edward IV., there was mention made of foreigners who were gold wiredrawers.

Thomas Williams said, that as a goldsmith, he has used the trade of drawing, &c. gold and silver wire or thread for fifteen years, and had employed Mary Forsett ; and described the process.

T. Ledsham said, that about twelve years ago he dwelt with Williams, and has been engaged in the manufacture.

Mary Forsett said, that in 38 Eliz., being ten years old, she was put apprentice to a Frenchman, John Rosineall, then living in London, who made thread, and taught her and others ; and afterwards she took up the trade.

Nicholas Forsett said, he was a weaver ; his wife works at the gold thread, as is lawful.

The defendants also said, that although "the forgeing, and beatinge of gould and silver plate with hammers, and cutting the same with sheares, after the manner or fashion of Venice, Millan, Bolonia, Florence, Italy, and Fraunce, and other parts, which the said grauntees do claime to use by collour of the said patent or graunte, bee a thing which these defendents nor anye of them doe or have used, practised, or exercised in their art or science, yet these defendants hope to prove that that kynde of workmanship alsoe was before his Majestie's happy entrance to this crowne endeavored by some to be brought to use in this realme.

"And theis defendants doe denye that the said Richard Dike, Mathias Fowle, Humfrey Phipps, and John Dade did, before others, sett upp the said feate, art, or mistery of drawing, millinge, flatting, whippinge, or spinninge of gould and silver threed, within this realme of England. But, as theis defendants take it, the said parties did inveagle divers workmen of that art or mistery, of and within the said cittye of London, to worke for them in the said arte or mistery, and to show and direct them how to gett and use the said engines and tooles belonging to the said art, and that sithence their instruccions and discoveries of the secretts of the said art, they the said grauntees and patentees have, by and under the foresaid and untrue suggestions by them made, obteyned their said last graunte and

patent, and not otherwise, without that the said R. Dike, M. Fowle, H. Phipps, J. Dade did, after the making of their said graunte, bring, or had caused to bring, any skilfull workemen and workwoemen in the said art, mistery, trade, or feate, from beyond the seas, or have taughte and instructed divers of this nation in the said art, mistery, trade, or feate, or that the said mistery is become profitable to this realme, by their paines, labour, and endeavours," or have in any way helped to establish it.

The defendant Williams denies that, in debating the matter before the Privy Council, he said that the trade had never before been used.

Ledsham denies the same.

The date of this answer is July 4, 1617. Other answers follow in the same spirit, which are too long to be inserted here.

The proceedings came to nothing. Yelverton replied; but his reply, so far as I am aware, has not been preserved. No depositions were taken, and no judgment was demanded. A new and stricter course was adopted; and with it, for the first time, Bacon<sup>a</sup> appears upon the scene. It will, therefore, be well before inquiring what was the part which he took in the matter, to attempt, as far as it is now possible, to bring before us the shape which the affair would be likely to assume in his eyes.

It is true that a sentence has frequently been quoted from Bacon's writings which is supposed to preclude the necessity of any further inquiry. He told Villiers, it is said, that he was to take care that "monopolies, which are the cankers of all trading, be not admitted under specious colours of public good."<sup>b</sup> If Bacon had foreseen the inference which was to be drawn from this simple expression, he would no doubt have replied in the words of the old maxim, "*Dolus latet in generalibus.*" A sweeping expression of this kind, by whomsoever put forth, is sure to be mentally accompanied by limitations which are forgotten by those whom it reaches in later generations. In truth, it would be as reasonable to charge with inconsistency any one amongst the numerous agitators who, within our own times, declaimed against the Corn Laws as a monopoly, because he took out a patent for a newly-invented machine, as it is to speak of Bacon as necessarily contradicting his own principles by the support which he gave to this patent. In 1621 Yelverton, when before the House of Lords, declared to a hostile audience his belief that the patent was no monopoly; and though no similar expression from Bacon's lips has reached us, there happens to be a curious piece of evidence which indirectly shows what his opinion was. In 1619 a declaration, which had been issued many years before for the guidance of suitors,

<sup>a</sup> Commons' charge against Mompesson. House of Lords MSS.

<sup>b</sup> Advice to Sir George Villiers.



was reprinted.<sup>a</sup> It contained information as to the classes of suits which the King bound himself to refuse. At the head of the list, occupying a paragraph by itself, stands the single word "Monopolies." Is it conceivable that this declaration was published without Bacon's knowledge? And if he had believed that the grants in question were monopolies in the objectionable sense of the word, would he not have suggested the suppression of the condemnatory document?

Already in the House of Commons, in 1601, Bacon had declared his opinion on the subject of grants of this kind. He there spoke of patents as commendable in cases in which "any man out of his own industry or endeavour finds anything beneficial for the commonwealth, or brings in any new invention;" that is to say, I suppose, introduces it from a foreign country.

Nor is this concession of an equality of privilege to original inventors and to persons who merely introduce an invention from a foreign country peculiar to Bacon. Its principle was taken for granted by both sides in the conflict which ensued. It was left untouched by the statute of Monopolies in 1624, and it is to this day held by lawyers to be in accordance with the law of England.<sup>b</sup>

The objection which was raised in the House of Commons against the patents of 1611 and of 1616 was not that they conferred a monopoly upon a manufacture introduced from abroad, but that, in point of fact, the manufacture was not introduced by the patentees. To do them justice, those who spoke on behalf of the Government always acknowledged that, according to the strict letter of the law, this was true. Gold wire, they said, had been manufactured in England before. Stripped of its technicalities, their language amounts to this: Though the patentees were not the first to make wire in England, they were the first to set up a manufacture on a sufficient scale to compete with the importation from the Continent. The object of the grant was not primarily to reward the patentee, but to benefit the nation; and if it could be shown that it was owing to the efforts of the patentees that the manufacture would be introduced on a large scale into England, the Government would probably feel themselves justified in overriding the claims of those whose labours, whatever they were, had not succeeded in bringing the manufacture into English hands.

Unless we had in our hands specimens of the work of both parties, it would

<sup>a</sup> There is a copy with this date amongst the State Papers.

<sup>b</sup> By the statute of Monopolies, patents for fourteen years may be granted for the "sole working or making of any manner of new manufactures within this realm." The interpretation put upon this is, that "a person who first imports an invention, publicly known abroad, into this country, is the first inventor within these realms." Chitty, *Collection of Statutes*, ed. 1853, iii. 445, note b.

hardly be possible for us to judge what improvements had been introduced. That there was at least a difference is acknowledged by the replies in the Exchequer. To us, no doubt, the course to be taken is clear. A patent should have been granted for the improvements, leaving the goldsmiths to do what they could with their old methods. In other words, the patent of 1611 should have been adhered to, and the patent of 1616 should have been dropped. Yet, when we remember that it was only after seventeen months of patient consideration that Ellesmere consented to set the seal to the latter patent, we may perhaps hesitate before we charge him with dishonesty in giving his assent at last.

Unfortunately for the credit of the Government the prosecution in the Exchequer was dropped. Perhaps it was feared that the court would decide without respect for the plea that the practical introduction of the manufacture was sufficient. At all events, Sir E. Villiers was anxious to receive the interest of the money he had invested. Scarcely had the Bill in the Exchequer been filed, when he and Fowle brought to Yelverton a letter which had been written by the King in Scotland, on the 10th of July, ordering him to commit offenders to prison; in what capacity does not appear. This letter, he afterwards stated, "he kept by him, thinking the King not well informed."<sup>a</sup>

In due course of time the King returned to England. A project was broached for inspiring the offenders with greater terror. The manufacture was to be taken altogether into the King's hands. Fowle became the King's agent. The profits were to be the King's, and out of these he agreed to give a pension of £500 a year to Sir Edward Villiers, who had sunk £4,000 in the scheme, and £800 to Christopher Villiers.

The scheme was referred to Bacon, Montague, and Yelverton;<sup>b</sup> and after their approval had been obtained, the following proclamation<sup>c</sup> was issued on the 22nd of March, 1618:—

"James, by the Grace of God, King of England, Scotland, France, and Ireland, defender of the faith, &c. To all to whom these presents shall come, greeting. Where wee have alwayes helde it one of the most necessary cares and considerations incident to the state and office of kings and soveraigne princes, so to dispose of their people and government, as the knowledge and use of good and profitable arts and inventions may become common and frequent among their people, the same being one of the greatest means to increase and preserve the wealth and strength of state and people; considering that labour and industry, well imployed, maketh kingdomes great and flourishing. And, forasmuch as some of our good and loving subjects of our realme of England have of

<sup>a</sup> Notes of Yelverton's case, House of Lords MSS.

<sup>b</sup> Commons Journals, i. 538.

<sup>c</sup> Proclamation, March 22, 1618. State Papers, Dom. clxxvii. 53.

late, to their great charge, brought into this our kingdome, and have herein by their great industry erected and perfectly established the arte and mysterie of making gold and silver threed, a feate or manufacture formerly used or made in forraine parts beyond the seas, and by strangers and others from thence transported and brought as a commodity of great use into this our kingdome of England, wherein they have so well and commendably proceeded, as that they are now able to make sufficient store of gold and silver threed to serve for the use and expence of our whole kingdome. And whereas a matter of so great consequence, and wherein so many of our people should be interested both in the making and use thereof, may well be judged more fit for us to take into our hands, then to leave the same to the power and dispose of private men; and as well to prevent the abuses which may be offered to us and our subjects by the counterfeiting of the said gold and silver threed, as likewise for the preservation of bullion within this our kingdome, we have caused this our whole worke to be taken into our possession for the general good and benefit of our people and loving subjects, and have also provided and taken sufficient order that our loving subjects in all parts shall not at any time want convenient quantitie of the said gold and silver threed for their use, but shal also be served of it at reasonable prisès; and that such as are skilfull in the working and spinning thereof shall be employed therein, if they faithfully and honestly performe the same, and at such rates and wages as they whom wee specially shall lycence thereunto shall thinke meete and convenient; which care and good intention of us hath of late beene greatly interrupted and opposed, not onely by the bringing into our said kingdomes and dominions great quantities of gold and silver threed from divers parts beyond the seas, but also by the private working and making thereof in corners, by divers strangers and others, contrary to our patent of privilege heretofore granted; the same being no knowne nor continued trade within these our realmes, howsoever divers of the goldsmiths of London have lately presumed and attempted to make the same parcell of their trade, by reason onely of some few experiments heretofore by them and others made, and by fittes onely, and for very small quantities of gold and silver threed; whereby this so excellent an invention, thus brought into this our kingdome, is likely to be utterly overthrowen, and our subjects much wronged by counterfeit and base gold and silver threed made and sold by the under-hand workers, if the same by our care should not be provided for and speedily prevented; and albeit that by meanes of the gold and silver threed made and to be made within our said realme we should receive great hinderance in our customes and other dueties, formerly paide unto us and our predecessors, Kings and Queenes of this realme of England, for and upon that commodity imported, for which, neverthesse, we have taken order as farre as is convenient: yet wee, that in all our actions and proceedings have our eye of grace rather upon the flourishing estate of our kingdomes and the comfort of our people then upon our profit, have resolved to prefer the estate and good of our kingdome before the precise consideration of our own benefit, rather then to interrupt or overthrow so excellent a worke and effect of our care and princelie pollicie for the welfare of our subjects. These are, therefore, to require and command all and singular person and persons whatsoever, as well our naturall borne subjects as denizens or strangers, that none of them, nor any other person or persons whatsoever (other then such as we shall give special license thereunto, and such as they shall set on worke), doe at any time or times hereafter attempt or presume to make any gold or silver threed, or copper-gold and silver threed, within our said realmes and dominions, upon paine of forfeiture of all and every quantitie and quantities, parcell or parcels, of such



gold and silver threed, and copper-gold and silver threed, so made in our said realmes and dominions, contrary to our present commandement, and also upon paine of our high indignation and displeasure, and such further paines, penalties, and punishments as for the contempt of our commandement royall, in this behalf, may any way bee inflicted upon them, or any of them so offending contrary to the true intent and meaning herein signified.

And whereas by a statute made in the fourth yeare of the late King Henry the seventh, it was ordained and enacted that no finer of gold and silver, nor parter of the same by fire or water, from thenceforth should alay no fine silver nor gold, nor none sell, in any other wise, nor to any person or persons, but only to officers of mints, changes, and goldsmiths within this realme, for the augmentation and amendment of coine and plate; nor sell to no person any matter of silver molten and alaied, upon pain of forfeiture of the same, or the value of the gold or silver so alayed or sould; and that no goldsmith within this realme should melt and aloy any fine silver to or for any workes of other intent, but onely for making of amels, or for amending of plate, nor that they should sell no fine silver nor other silver alayed, molten into masse, to any person or persons whatsoever they bee, nor one goldsmith to another, upon paine of forfeiture of the same silver or value thereof. Wee, therefore, for the better execution of our said will and pleasure, and preservation of our bullion within this our kingdome, do further straitly charge and command that no goldsmith or goldsmiths, finer or finers, parter or parters of gold and silver, within our said dominions, shall for their use or benefit, uses or benefites, fine, part, or cause to bee fined or parted any gold or silver, or provide or cause to bee provided any gold or silver, and the same utter, or sell, or otherwise dispose to any person or persons whatsoever, whereby to make or cause to be made the said gold and silver threed, except to such person and persons as we shall license to make the same to our use, and that the said goldsmith or goldsmithes, finer or finers, parter or parters, or any of them, or any for them, or to their use or uses, shall not provide, utter, sell, or deliver any gold or silver at all to any person or persons whatsoever, without taking speciall notice of the names and habitations of such person and persons as shall buy, receive, or have any such gold or silver of them, to the end it may appear to us to what use and uses the same gold and silver shall be employed, upon paine of forfeiture of all such gold and silver, and of undergoing our high indignation and displeasure, with such further paines and punishments as for the same their defaults may any wayes bee inflicted upon them, and every of them, in this behalfe offending.

And we doe further straitly charge and command all and singular person and persons whatsoever within our said realms and dominions, that they nor any of them do or shal, at any time or times hereafter, make, erect, set up, mend, or use any frame, engine, instrument, mill, or tool whatsoever, for the drawing, flatting, milling, and spinning of gold and silver threed, or of copper-gold and silver threed, or for the drawing or flatting of wyer to the ende to make the same, without the lycence of us, or such as we in that behalf shal specially appoint, upon the paines and penalties before expressed; nor that any person or persons whatsoever shall provid or sell, or cause to bee provided or sould, any silke to be throwen or made fitting for the making or spinning of gold or silver threed, or of copper-gold and silver threed, except to such person and persons as we shal license to make the same to our use, upon the like pains and penalties before mentioned. And that no person or persons whatsoever, after the twentieth day of April next commencing, shall attempt or presume to bring in, or cause to be brought into our said realms and dominions thereof, or to any of the ports,

havens, creeks, or places of any of them, any gold or silver threed, or any copper-gold and silver threed, made or to be made in any forreine place or places whatsoever, upon paine of forfeiture of all such gold and silver threed, and of all such copper-gold and silver threed, so brought in or caused to bee brought into any of our sayd dominions, contrary to our said commandement. All which said gold and silver threed, and copper-gold and silver threed, brought in and forfeited as aforesayd, our will and pleasure is, that such person or persons as shall make seizure of the same shall forthwith bring and convey the same to the storehouse within our Custome-house, in our City of London. And after such person and persons shall have made such seizure of such forfeited gold and silver threed, and copper-gold and silver threed, and brought the same to our Custome-house as aforesaid, then our will and pleasure is that he or they, after due appraisement thereof, by the sworne praisers for such purposes, shall receive the moitie of the value of such gold and silver threed, and copper-gold and silver threed, so seized and brought in, as aforesayd, upon paine of imprisonment and such other punishment as shall be fitt to be inflicted for the breach of this our royall commandement. And our further will and pleasure is, that no person or persons whatsoever, after the twentieth day of April next coming, shall buy, receive, utter, or sell any gold or silver threed, or copper-gold or silver threed, made in the parts beyond the seas, or made within any of our sayd dominions, but onely such gold and silver threed, and copper-gold and silver threed, as shalbe first sealed with our scale, already appointed for that use, by such person or persons as shalbe by us in that behalfe especially nominated or appointed. And wee doe hereby further charge and command all customers and collectors of our customes, comptrolers, farmers, and their deputies, that after the twentieth day of Aprill next they take no entrie nor receive any custome or subsidy of any gold and silver threed, or for copper-gold or silver threed, to bee imported from the parts beyond the seas into this our realme of England, or the dominions thereof; and for the better execution of this our present will and commandement, wee doe straitly charge and command all justices of peace, maiors, bayliffes, sheriffes, constables, headborowes, tithingmen, and all other our officers, ministers, and loving subjects, to whom it shall or may appertaine from time to time, to be aiding and assisting to all such person and persons as wee shall lawfully from time to time authorize for the searching, seazing, taking, or carrying away of all such gold or silver threed, and copper-gold and silver threed, imported, wrought, or made within this our realme and dominions, contrary to our pleasure herein expressed.

Given at Whitehall the two and twentieth day of March, in the fifteenth yeere of our reigne of England, France, and Ireland, and of Scotland the one and fiftieth.

GOD SAVE THE KING!

Yelverton afterwards declared that, in giving his assent to this arrangement, he was actuated by a belief that the patent was a grievance, and that it would be more easily withdrawn if it were in the King's hands. If this were not a mere afterthought, there is no reason to suppose that his ideas were shared by Bacon; for though, at first sight, it seems a strong measure to bring the King's authority specially to bear upon a petty manufacture, it must not be forgotten that to him and to his contemporaries a trade in gold and silver stood upon a peculiar footing.

To us a dealer in the precious metals is no more than a dealer in iron or cotton. To the men of the time of James I. he was a dealer in the very wealth of the country itself. To allow gold and silver to be tampered with by artizans who were under no supervision, was to authorise the most unblushing robbery of the commonwealth. The patentees had offered to meet the difficulty. They had engaged to import £5000 worth of bullion every year, and the King's agents would of course take up the engagements of the patentees. If wealth was to be frittered away in adorning the dress of fine ladies and fine gentlemen, it should be the wealth of Spaniards and Frenchmen, and not the wealth of Englishmen. Such arguments sound strange enough to us, but it is hopeless to expect to arrive at truth if we do not take them into consideration when dealing with the statesmen of the seventeenth century. If any one doubts how far they influenced Bacon, he may be called upon to remember the active part taken by him in the prosecution of the Dutch merchants in 1619 for the exportation of coin.

In the Act of Henry VII. he had found the weapon that he needed. The goldsmiths had urged that they had made gold thread before Dike and Fowle. The reply of the Government was, that if this was the case, they had broken the law.

On the 6th of April, 1618, Dike and Fowle surrendered their patent.<sup>a</sup> On the 11th, fresh patents were granted, prohibiting "that no person or persons should import gold or silver thred; and in them the sole benefit to be raised by the sole making and selling hereof is given to the said Fowles from thenceforth till the feast of St. Michael in the 19th year of His Ma<sup>tie</sup>, without anie account; and the said Fowles, his executors, agents, servants, and assignees are, for this great service, exempt and freed from all offices, publique or private, to the Kinge or commonwealth."<sup>b</sup> On the 22nd the following commission<sup>c</sup> was issued for the discovery and punishment of offenders:—

James, by the Grace of God, King of England, Scotland, France, and Ireland, defendor of the faith, &c. To our trusty and right welbeloved counsellor Sir Frauncis Bacon, Knight, Lord Chauncellor of England; and to our right trusty and right welbeloved cosen and counsellor Thomas, Earle of Suffolke, our Treasurer of England; and to our trusty and right welbeloved counsellors, Sir Thomas Lake, Knight, Sir Robert Naunton, Knight, our Principall Secretaries; and to our trusty and welbeloved Sir Henry Mountague, Knight, Chief Justice of the Pleas before us to be

<sup>a</sup> Close Rolls, 16 Jac. I. part 15.

<sup>b</sup> Commons' charge against Mompeyson. House of Lords MSS. The patent was never enrolled, and is therefore not to be found in the usual place.

<sup>c</sup> Patent Rolls, 16 Jac. I. part 12.



holden assigned, Sir Henry Yelverton, Knight, our Attorney-Generall, Sir Thomas Coventrie, Knight, our Solicitor-Generall, and Sir Allen Appesley, Knight, Lieutenant of our Tower of London, and Francis Michell and Henry Twedy, Esquiers, greetinge, knowe ye that we, trustinge in your fidelities, industry, and provident care in our affaires, have assigned and appoynted you to be our Comissioners, and by these presentes doe give unto you, or any twoe or more of you, full power and authority by these presentes to examine, enquire, and fynde out as well by the oathe, examynacions, and deposicions of credible persons, as by all other lawfull wayes and meanes whatsoever, according to your wisdomes and good discrecions, all such quantities of gould and silver thredd and copper gould and silver thredd as shalbe imported and brought from any forrayne partes beyond the seas into this our realme of England, or the domynions thereof, by any person or persons, after the twentieth day of Aprill last, contrary to the tenor and effect of our proclamacion in that behalfe lately published and declared, and by whome the aforesaid gould and silver thredd, and copper gould and silver thredd, or any quantity or parcell thereof, was or shalbe imported into our said realme or the domynions thereof. And alsoe to examyne aswell every or any the officer or officers of our customes and subsidies, and every or any the officers of or farmors of our customs and subsidies, and every or any of their deputies, or the deputies of any of them, within every port and creeke of our said realme of England and domynions thereof, as every or any silkeman, silkeweaver, or goldweaver, and all or any other person or persons whatsoever, uppon their corporall oathes or otherwise, of such quantities or parcell of gould and silver thredd, or copper gould and silver threed, as is or shall be broughte into this our realme or the domynions thereof since the said twentieth day of Aprill, and from what place or places in the said forrayne partes and partes beyond the seas such gould or silver thredd, or copper gould or silver thredd, shalbe imported and brought, and in what portes and creeks respectively the same was or shalbe unshippt or landed, and in what shippes or vessels, shipp or vessell, it was or shalbe soe imported or brought, and by what marchantes or marchant and other persons it was or shalbe so imported and brought, and of the names aswell of the marchantes and factors as of the maisters and marryners of the shippes, and of the names of the shippes and vesselles, by whome and in which the said gould and silver thredd, or copper gould and silver thredd, was or shalbe soe imported and brought into our said realme, or the dominions thereof, after the tyme before mentioned; and of the several prizes or value of the said gould and silver thredd and copper gould and silver thredd soe imported and brought, or that shalbe imported and brought; and where the said marchants, factors, masters of shippes, and marryners doe or shall respectively dwell and abide; and to whose handes the said gould and silver thredd or copper gould and silver thredd soe imported and brought, or that shalbe imported and brought, did or shall afterwarde come, and in whose handes it doth or shalbe or remayne, and how and to what use it was afterwards ymployed; and alsoe to enquire, finde out, examyne, and discover if any person or persons doe or shall make, or presume or attempt to make or spyn any gould or silver thredd, or copper gould or silver thredd, or drawe or flatt any gould or silver wyer, or copper gould or silver wyer, for makeinge of the said thredd; or shall erect, make, or amend any mill, frame, engyne, toole, or devise whatsoever for the makeinge of the said gould or silver thredd, or copper gould and silver thredd; and yf any silkeman or others doe or shall throwe any silke for the makeing thereof, or doe or shall buy, utter, or sell any of the said thredd; and yf any goldsmith or fyner, or any of them, or by their meanes

within our said realme, or the domynions thereof, doe or shall prepare or disgrosse any gould or silver, and the same utter or sell to any person or persons whatsoever for the makeinge of the said thredd, contrary to the tenor and effect of our said proclamacion; and alsoe to enquire of all other articles, matters, and circumstances any waies tendinge to the searchinge and finding out of the truth and certaynety of the premisses soe much concerninge our service and benefitt. And therefore we will and require you, or any twoe or more of you, at fitte and meete daies and tymes, to attend on the performance of this our service. And that you, or any twoe or more of you, having convented or brought before you any person or persons offendinge, or suspected by you to offend in the premisses, contrary to the purport and true meaninge of our said proclamacion, shall take and use such present order and meanes for the punishment and restraynt of him or them soe found offendinge in the premisses, by imprisonment or otherwise, as to you or any twoe or more of you shall seeme meete and convenient. And further, that you or any twoe or more of you shall doe and execute from tyme to tyme all such actes, matters, and thinges as shall tend to the advancement of our service herein, and whereby such our agent or agentes as are or shalbe by us appoynted and assigned for the makeinge of the said gould and silver thredd, and copper gould and silver thredd, may have and enjoy the sole practize and exercise of the saide manufacture for us, and for our best benefitt and profitt, accordinge to the tenor of our said proclamacion. And these presentes or th'inrollment thereof shalbe from tyme to tyme to you and every of you a sufficient warrant and discharge for the doeing, performyng, and executinge of the premisses. In witnes whereof, &c. Witnes our selfe at Westminster, the twoe and twentieth day of Aprill.

PER IPSUM REGEM.

The first act of the new Commissioners was to sign the following warrant dormant, to authorise their officers to search for gold and silver thread:\*

After our verie heartie comendacions. Whereas our soveraigne Lord the King's Ma<sup>tie</sup> hath taken into his owne hands the manufacture of makeinge gold and silver thredd, and of copper gold and silver thredd, and prohibited all persons (save onlie such as his Ma<sup>tie</sup> hath in that behalfe specially appointed) eyther to ymport the same from anie forraine parts, or anie waies to intermeddle in the workeinge or makeinge thereof within this his Ma<sup>tie</sup>'s realme of England and dominions thereof, as by his highnes proclamacion and royall prohibicion latelie made and published more at large maie appeare: Now, forasmuch as wee are given to understand that divers parsons, aswell strangers borne as others, dailie import great quantities of that commoditie, and secretlie worke and intermeddle in that manufacture within this kingdome, in high contempte of his Ma<sup>ty</sup> said proclamacion and prohibicion, made and published as aforesaid, These are therefore to will and require you, and in his Ma<sup>ty</sup>'s name straightlie to charge and command you, and everie of you, ymmediatlie uppon the sight hereof to be aideinge and assistinge unto this bearer, to make diligent search in all such places within your liberties and jurisdictions, as this bearer shall in anie wise suspect. And also to aide and assist this bearer to attache and arrest the bodies of all such parsons as he or you shall finde, knowe, or suspect to worke or anie waies intermeddle in the said manufacture contrarie to the tenor of the said proclamacion, soe that the bearer hereof maie

\* House of Lords MSS.

bringe their bodies in his companie before us, or some of us, in all convenient speed; and if anie parson or parsons offendinge or suspected to offend, or anie other parson whatsoever, shall upon the sight hereof refuse, contradict, or denie the bearer hereof to search in anie of their houses or ells where, or to execute anie other matter or thinge contained in this our warrant, or shall anie waies hinder the present execucion hereof by anie delaies, excuses, or other means whatsoever; then it shall and maie be lawfull, by vertue of these presents (callinge sufficient aide to assist you or otherwise) to enter into all such suspected houses or places, and there to search, and doe what in your discrecions you shall thinke lawfull and meete. And also to attach the bodies of all such persons as shall anie waies hinder or delaie the present execucion hereof, to thend the bearer hereof maie bringe their bodies before us or some of us, there to answer to such matters touchinge their contempt as shalbe objected against them. And these are further to will and require you to be aideinge and assistinge unto this bearer to sequester and take from the said persons soe offendinge, or suspected to offend, all such gold and silver thredd, and copper gold and silver thredd, as you shall finde in their or anie of their possessions, and all instruments, mills, tooles, engines, and materialls by them used therein, soe that he maie keepe the same in his safe custodie untill wee shall give order to the contrarie; and this shalbe your warrant in that behalfe. And hereof faile you not, as you will answer the contrary.

To all maiors, aldermen, sheriffs, justices of peace, bailiffs, constables, headboroughes, and other officers to whome it maie in anie wise appertaine.

FR. BACON, *Canc.*

T. SUFFOLKE.

THO. LAKE.

ROBERT NAUNTON.

H. YELVERTON.

THOMAS COVENTRYE.

ALLEN APSLEY.

FRA. MICHELL.

HENRY TWEEDY.<sup>a</sup>

The powers thus conferred were immediately put forth by Michell and Tweedy, who practically represented the Commissioners. From Thomas Ledsham, 7 May, 16 of the King, "they took a mill;" from [Robert] Patrickson, May, 16 Jac. "all his silver made up in wyer, a flatting mill and other tools," and 17 June, "silver thred to the value of eight pounds;" from John Wakeland, a mill; from Michell Seller, gold and silver thred; from Samuell Buckley, certayne ounces of gold thred; from Nicholas Carewe, the pike; . . . "7 Maii, 16 Jac. Thomas Ledsham was gotten to Fowles his howse, and there kept eight howers, and in the meane tyme they searcht his house, and Sir Francis Michell and Henrie Twedy committed him to Newgate, where he remained a moneth." . . . In "May 1618, Robert Patrickson and three of his servantes were imprisoned by the said Sir

<sup>a</sup> It will be observed that Montague's signature is absent. For this he afterwards got some credit. Yelverton's account is, that "My Lord Chief Justice refused itt, because of granting *habeas corpus*," that is to say, I suppose, because the question involved might come before him judicially. Notes of Yelverton's speech, House of Lords MSS.



Francis Michell and Henry Twedy, two of them in Newgate, and two in Finsbury, where they all laid seaventeen dayes." . . In " May 1618, More, Simondes, Underhill, Wakeland, Mason, Whiting, and Sandes, were committed by Sir Frauncis Michell and Twedy, where they lay six dayes; and after they and some others were discharged, Sir Frauncis Michell and Twedy sent for their warrants of *mittimus* for their severall committmentes from of the file."<sup>a</sup>

Yet it was soon found that the competition was too strong to be repressed even by such measures as these. Fowle again appealed to the King for help. On the 20th of August Buckingham wrote to the Chancellor the following letter :—<sup>b</sup>

" Whereas it hath pleased his Majesty to recommend unto your consideration a petition exhibited by Mr. Fowle, together with the grievances and request for the rectifying of the worke of gold and silver thread : and now understandeth that your Lordship hath called unto you the other commissioners in that case, and spent some time to hear what the opposers could object, and perceiveth by a relation of a good entrance you have made into the business : and is now informed that there remaineth great store of gold and silver thread in the merchants' hands, brought from foreign parts, besides that which is brought in daily by stealth, and wrought here by underhand workers ; so that the agents want vent, with which inconveniences it seemeth the ordinary course of law cannot so well meet ; and yet they are inforced, for freeing of clamour, to set great numbers of people on worke ; so that the commodity lying dead in their hands, will in a very short time grow to a very great sum of money. To the end therefore that the undertakers may not be disheartened by these wrongs and losses, his Majesty hath commanded me to write unto your Lordship to the end you might bestow more time this vacation in prosecuting the course you have so worthily begun, that all differences being reconciled, the defects of the commission may be also amended for prevention of farther abuses therein ; so as the agents may receive encouragement to go on quietly in the worke without disturbance."

Again, on the 4th of October, Buckingham wrote thus :—<sup>c</sup>

" His Majesty is desirous to be satisfied of the fitness and conveniency of the gold and silver thread business ; as also of the profit that shall any way accrue unto him thereby. Wherefore his pleasure is that you shall, with all convenient speed, call unto you the Lord Chief Justice of the King's Bench, the Attorney-general, and the Solicitor, and consider with them of every of the said particulars, and return them to his Majesty, that thereupon he may resolve what present course to take for the advancement of the execution thereof."

The result was the following certificate,<sup>d</sup> to which, for some reason or other, Coventry's name is not appended :—

<sup>a</sup> Commons' charge against Mompesson. House of Lords MSS.

<sup>b</sup> Buckingham to Bacon, August 20, 1618. Bacon's Works, ed. Montagu, xii. 355.

<sup>c</sup> Ibid. October 4, 1618. Bacon's Works, ed. Montagu, xii. 357.

<sup>d</sup> Bacon's Works, ed. Montagu, xiii. 16.

May it please your most excellent Majesty, according to your Majesty's pleasure signified to us by the Lord Marquis Buckingham, we have considered of the fitness and conveniency of the gold and silver thread business, as also the profit that may accrue unto your Majesty.

We are all of opinion that it is convenient that the same should be settled, having been brought hither at the great charge of your Majesty's now agents, and being a means to set many of your poor subjects on work; and to this purpose there was a former certificate to your Majesty from some of us with others.

And for the profit that will arise, we see no cause to doubt; but do conceive apparent likelihood that it will redound much to your Majesty's profit, which we esteem may be at the least ten thousand pounds by the year; and therefore, in a business of such benefit to your Majesty, it were good it were setted with all convenient speed, by all lawful means that may be thought of; which notwithstanding, we most humbly leave to your Majesty's highest wisdom,

Your Majesty's most humble and faithful servants,

FR. VERULAM, *Canc.*

H. MONTAGUE.

HENRY YELVERTON.

Upon this certificate a fresh commission was issued on the 20th of October.<sup>a</sup>

James, by the Grace of God, King of England, Scotland, France, and Ireland, defender of the faith, &c. To our trustie and right welbeloved Councillor, Francis, Lord Verulam, Lord Chancellor of England, and to our trustie and right welbeloved Councillors, Sir Thomas Lake, Knight, Sir Robert Naunton, Knight, our principall Secretaries, and to our trustie and welbeloved Sir Henrie Montague, Knight, Cheife Justice of the Pleas before us to be houlden assigned, Sir Henrie Yelverton, Knight, our Attorney-Generall; Sir Thomas Coventrie, Knight, our Solicitor-Generall; Sir Allene Apseley, Knight, Leiftenant of our Tower of London; Sir Gyles Mompesson, Knight; Sir John Keyes, Knight; Sir Saunder Doncome, Knight; Richard Cartright, Robert Garsett, Francis Michell, Henrie Twedie, Esquiers; Mathew Stocker and John Waynwright, gentlemen, greeting. Knowe yee that wee trusting on your fidelities, industrie, and prudent care and circumspection in our affaires, have assigned and appointed you to be our Comissioners. And by these presentes doe give unto you, or any twoe or more of you, full power and authoritie, as well within liberties as without, to examine, enquire, and finde out, aswell by the oath, examinations, and depositions of all and everie person and persons whatsoever, as by all other lawfull waies and meanes whatsoever, according to your wisdomes and good discretions, all such quantities of gould or silver thread, or copper gould and silver thread, as sithence the twentieth day of Aprill, in the sixtene yeare of our raigne of England, hath bene or hereafter shalbe imported and brought from any foraigne part beyond the seas into this our realme of England, or the dominions thereof, by any person or persons, contrarie to the tenor and effecte of our proclamacion in that behalfe latic published and declared; and by whome the aforesaid gould or silver thread, or copper gould or silver thread, or any quantitie or parcell thereof, was or shalbe imported into our said realme or the

<sup>a</sup> Patent Rolls, 16 Jac. I. part 16.

dominions thereof ; and alsoe to examine upon oath aswell everie or anye the officer or officers of our customes and subsidies, and everie or anye the officers of our farmers of customes and subsidies, and everie or anye of their deputies, or the deputies of any of them, within everie port and creeke of our saide realme of England and dominions thereof ; and everie or any silkman, silkweaver, gouldweaver, or goldsmith, and all or anie other person or persons whatsoever, upon their corporall oathes or otherwise, of such quantities or parcells of gould and silver thread, or copper gould or silver thread, as since the said twentieth day of Aprill hath bene or hereafter shalbe brought into this our realme, and from what place or places in the said forraine partes and partes beyond the seas such gould and silver thread, or copper gould or silver thread, hath bene or shalbe imported and brought and in what portes and creekes respectively the same was or shalbe unshipt and landed, and in what shippes or vessels, shipp or vessell, it was or shalbe soe imported or brought, or by what marchaunt or merchants, or other person, it was or shalbe soe imported and brought, and of the names aswell of the merchautes and factors as of the maisters and marriners of the ships and of the names of the ships and vessells by whome and in which the said gould and silver thread, or copper gould and silver thread, was or shalbe soe imported into our said realme or the dominions thereof, after the tyme before-mencioned, and of the severall prizes and value of the said gould and silver thread and copper gould and silver thread soe imported and brought, or that shalbe imported and brought ; and where the said merchautes, factors, maisters of shippes, and marriners doe or shall respectively dwell and abide ; and to whose handes the said gould and silver thread, or copper gould and silver thread, soe imported and brought, or that shalbe imported or brought, did or shall afterwarde come, and in whose handes it doth or shalbe or remaine, and how and to what use it was or shalbe afterwarde employed. And alsoe to examine, enquire, and find out uppon oath all and every person and persons other then those that shalbe chardged as delinquents, for soe much onely as concerneth themselves and their owne trespasses and contemptes, and by all other lawful waies and meanes whatsoever, if any person or persons have, hath, or shall make, or presume or attempt to make, or shall be suspected to make or spinn any gould or silver thread, or copper gould or silver thread, or drawe or flatt, or cause to be drawn or flatted, any gould or silver wyer, or copper gould or silver wyer, for the making of the said thread, or shall erecte, make, or amend any mill, frame, engine, toole, or devise whatsoever, for the making of the said gould or silver thread, or copper gould or silver thread ; and if any silkman or others doe or shall throwe any silke for the making thereof, or if any silkman, goldweaver, or silkweaver, or their or any of their servantes or agentes, or any other whatsoever, have made, bought, or sould any gould or silver thread, or copper gould or silver thread, and of the quantitie thereof, and of whome the same was bought since the said twentieth day of Aprill last, or if they or any of them doe or shall directlie or indirectly buy, utter, sell, or make any of the said thread, wrought or unwrought, into lace or otherwise ; and if any goldsmith or goldsmithes, fynor or fynors, or any of them, or any other by their meanes or privitie, or any other whatsoever by us not specially thereunto authorised within our said realme or the dominions thereof, doe or shall provide, prepare, or disgorse any gould or silver, and the same utter or sell to any person or persons whatsoever for the making of the said thread, contrarie to the tenor and effecte of our proclamacion and statute therein recited. And alsoe to enquire of all other articles, matters, and circumstances any waies tending to the searching and finding out of the truth and



certentie of the premises soe much concerning our service and benefitt. And therefore wee will and require you, or any twoe or more of you, at fitt and meet dayes and tymes, to attend on the performance of this our service, and that you, or any twoe or more of you, having convented or brought before you or any person or persons offending or suspected by you to offend in the premisses, contrarie to the purport and true meaning of our said proclamacon, shall take and use such present meanes and order for the punishment and restraint of him or them soe found offending in the premises as to you, or any twoe or more of you, shall seeme meete and convenient. And further that you, or any twoe or more of you, shall doe and execute from tyme to tyme, all such actes, matters and thinges as shall tend to the advancement of our service herein, and whereby such our agent or agentes as are or shalbe by us appointed and assigned for the making of the said gold and silver thread, and copper gold and silver thread, may have and enjoy the sole practise and exercise of the said manufacture, for us and for our best benefitt and profitt, according to the tenor of our said proclamacon. And theise presentes, or the enrollment thereof, shalbe from tyme to tyme, to you and everie of you as aforesaid, a sufficient warrant and dischardge for the doeing, performing, and executing of the premisses, and that whatsoever to the orders and comaundement of you, or any twoe or more of you, in the execution of the premisses, shall be disobeying, contrariant, or resisting, to chastice, correete, and punishe, accordinge to your discrecions. And we doe commaund and require our attorney generall, uppon notice of anye contemptates or offence committed or done against our said proclamacon or Acte of Parliament therein mencioned, to informe againste the offenders therein that shall not submitt themselves to the order and direction of you or any twoe or more of you, our said Commissioners, in our Court of Starr Chamber. In wittness whereof, &c. Wittnes our selfe, att Westminster, the twentieth day of October.

PER IPSUM REGEM.

Yelverton was not long in acting upon the authority thus conveyed to him. On the 7th of November he "informed in the Starre Chamber agaynst many silkemen and woorkemen. They justifie for an auncient trade."<sup>a</sup> There was also a cross bill against Fowle and others. The question of law involved was referred to Montague. The suit, however, was not proceeded with. As a charge was afterwards brought against Michell, that he "tooke four 22s. pieces of dyvers partyes in that sute in the Starre Chamber to procure there favoure,"<sup>b</sup> it may be concluded that the proceedings were stopped upon the submission of the defendants.

At the commission the presence of Mompesson, whose name now appears on the list for the first time, imparted fresh vigour to the proceedings. In the spring of 1619 there were fresh imprisonments; houses were again broken into, and tools and engines seized.

<sup>a</sup> Notes of Yelverton's case. House of Lords MSS.

<sup>b</sup> Serjeant Crew's brief. House of Lords MSS.

It was at this time that a new plan was suggested in a letter from the King.<sup>a</sup> The goldsmiths and the silkmen, it was thought, might be required to enter into bonds not to sell their wares to unlicensed persons. Bacon and Montague<sup>b</sup> were consulted with, and approved the course proposed. Accordingly, we hear that “Sir Gyles and Mitchell, before the proclamacion of 10th Octobris, 17 Jac. (which might warrant a bonde), injoynd dyvers to enter bonds for restraint of their free trades; and uppon their refusall to enter such bonds, gave many threats; and beinge required to shewe by what authoritie he required those bonds, acknowledged he had noe warrant for yt, but, yf perswasions avayled not, he would effect yt by a stronge hande, and uppon their refusall would fill all the prisons about London. . . . He committed dyvers for refusinge to enter bonde, or to forbear trade, before the proclamacion aforesaid, viz<sup>t</sup>. in or about June before.”<sup>c</sup>

Another account carries the story on as follows:—“Acton, Paske, Grove, Eldred, and Page, five silkmen, were committed onely for refusing to seale the bond tendred to the silkemen; the manner whereof was thus:—First, Sir Giles Mompesson threatened them for not sealing the bond, and told them yf they refused to seale, all the prisons in London should be filled, and thousandes should rott in prison, and a heavier hand should bee uppon them. Shortlie after which Sir Henrie Yelverton confessed that Sir Edward Villiers pressed him now to helpe him; that the buysiness lay a bleeding, and that he must now helpe him, or else all was lost. Whereuppon, the silkemen refusing to seale the bond, he committed them to the Fleete, but wrote by Sir Edward Villiers to the Lord Chancellor that, except my Lord Chancellor would confirme the committment, he would instantly release them. And he said the Lord Chancellor did confirme yt, and that they were after heard by counsell before the Lord Chauncellor, who did remaund them to prison, where they remayned till, uppon the petition of the cittie to the Kinge,<sup>d</sup> his Ma<sup>tie</sup> instantlie released them, affirming that he would not governe his subjectes by bondes. They showed also that foure Aldremen of London offered to be baile for them in 100,000<sup>li</sup>, but Sir Henry Yelverton refused to take any such baile, and that he confesseth that when they were in prison they petitioned to him, but

<sup>a</sup> Notes of Yelverton's case. House of Lords MSS.

<sup>b</sup> In the report of Yelverton's statement in Proceedings and Debates, i. 138, it is said that the bond was referred to Montague and Hobart.

<sup>c</sup> Offences of Sir G. Mompesson. House of Lords MSS.

<sup>d</sup> Five weeks after the committal of the prisoners, that is to say in July or August, 1619. Commons Journals, i. 541.

he gave them no answer, nor durst for feare of Sir Edward Villiers and Sir Giles Mompesson.”<sup>a</sup>

James’s language about the bonds was merely the result of momentary good nature. It was not the commencement of any change of policy. On the 10th of October the following proclamation<sup>b</sup> was issued, authorising the continuance of the system:—

BY THE KING.

A Proclamation for the better setting of his Majesties manufacture of Gold and Silver Thread within this his Realme.

Whereas the art or myserie of making gold and silver thread (a commoditie of continuall use in this our kingdome of England) hath formerly been used and made by strangers in foreigne parts only, and from thence transported into this our realme, but of late hath beene practised by some of our loving subjects, who by their great charge and industrie have so well profited therein, and attained to such perfection in that arte, that they equall the strangers in the skilfull making thereof, and are able by the labours of our owne people to make such store as shall be sufficient to furnish the expence of this whole kingdome. And whereas we, esteeming it a principall part of our office as a King and Sovereigne Prince, to cherish and encourage the knowledge and invention of good and profitable arts and mysteries, and to make them frequent amongst our owne people, especially such wherein our people may employ their labours comfortably and profitably, and many thereby may be kept from idlenesse, hereby to preserve and increase the honour and wealth of our state and people. And finding that the exercising of this arte or myserie (considering the continuall use of bullion to be spent in the manufacture thereof) is a matter of great importanee, and therefore fitter for our own immediate care then to be trusted into the hands of any private persons, for that the consumption or preservation of bullion, wherof our coynes (the sinewes and strength of our state) are made, is a matter of so high consequence, as it is onely proper for oure selfe to take care and account of; We have heretofore, to the good liking of the inventors thereof, taken the said manufacture of gold and

<sup>a</sup> Commons’ charge against Mompesson. House of Lords MSS. The King’s speech about not governing his subjects by bond was made much of in the House of Commons. The way the story was there told leaves the impression that it put a stop to all further demand for bonds. I have been led to place the saying in July or August 1619, before the second proclamation, by the evident reference of the two quotations which I have given to the same affair; the words ascribed to Mompesson about filling the prisons being the same in both. Besides there is an allusion to this petition of the Aldermen in a statement relating to the drawing up of the proclamation. The King, we are told, “remembered a difference between the city and the patentees. And the Solicitor now, and then Recorder” [*i.e.* Sir R. Heath], “added; who had his hand in, if drew not the proclamation.” Commons Journals, i. 538.

Nor would the difficulty be got over by placing the scene after the proclamation. For, as will be seen, bonds continued to be taken long after Yelverton had ceased to be Attorney-General.

<sup>b</sup> State Papers, Domestic, clxxxvii. 71.



silver threed into our owne hands, and so purpose to retaine and continue it, to be exercised only by agents for ourselves, who shall from time to time be accomptable to us for the same. And whereas, for the better perfecting of so royall a worke, by our proclamation, dated the two and twentieth day of March in the fifteenth yeere of our raigne of England, wee did utterly prohibite the importation of all forraine gold and silver threed made in any the parts beyond the seas, and the use of any other gold or silver threed then such as should from time to time be sealed with a seale to be to that purpose appointed, thereby to discover all false, counterfeit, and prohibited stuffe, whereby either our loving subjects might be abused, or ourselves deluded, as by the same proclamation appeareth; which wee will and command, and our expresse pleasure is, shall in all things be firmly observed and kept, according to the purport and true meaning thereof, and of our royall intent and pleasure therein expressed.

Now, forasmuch as wee find that, notwithstanding our proclamation, many have adventured secretly and by stealth to import gold and silver threed from forraine parts, and many others to make the same within this realme (not being thereunto allowed by us, or our agents), and to utter the same to divers of our loving subjects, not being sealed with the seale to that purpose appointed, whereby wee finde that our owne agents and workemen employed about the said manufacture are discouraged, and much false and counterfeit stuffe is vented, to the great deceit of our subjects, scandall of the work, and our owne proper losse, and yet the offenders therein cannot easily be discovered, whereby they might be punished according to their demerits; for that the silkemen and silkeweavers, and others, who buy and use the said gould and silver threed, are unwilling to discover such offenders, and (as we have cause to feare) doe rather encourage them in their offence, in contempt of us and our proceedings. To the end therefore that this our worke, which we have appropriated to our selfe, may prosper in our hands, and neither our agents be discouraged, nor the worke discountenanced by the making, working, or uttering any false, counterfeit, or prohibited stuffe, and that those whom we have trusted and employed therein may also performe their duties justly and faithfully, without just grievance or offence to any of our loving subjectes, we doe hereby straightly charge and command, that all silkemen, silkeweavers, and all and every person and persons, who now use or hereafter shall use the arte, mysterie, trade, or occupation of making, working, selling, or uttering of any lace, buttons, or any other thing or things whatsoever, in all or in part wrought of or with gold or silver threed, or of or with copper gold or silver threed, shall from time to time take and keepe a true, just, and exact accompt in writing, of all the names, professions, and habitations of all and every person and persons, of whom they or any of them shall from time to time buy or receive any gold or silver threed, or copper gold or silver threed, or anything wrought or made in all or in part therewith, with the time and times and severall quantities when and what they so bought or received the same; which said account they and every of them shall once a month deliver unto a register, to bee for that purpose appointed by some of our commissioners for the said manufacture, that so the offenders against our former and this present proclamation may be the better discovered, and their offences severely punished, as being a high contempt against us and our prerogative royall: For the due performance whereof, and to prevent the inconveniences that may ensue, our will and pleasure is, and wee doe hereby straitly charge and command, that all and every the persons aforesaid shall enter into bond of one hundred

or two hundred pounds apiece, and not above (as shalbe thought fitt by our Commissioners appointed for the said manufacture now, or that hereafter shalbe, or any two of them), to our Attorney-Generall for the time being, in trust for us ; with condition to performe all and every the particulars in the former clause expressed and commanded, upon the paines hereafter limited, which we will shall be severely inflicted on them.

And further, We will and command that no fynor or fynors of gold or silver shal at any time or times hereafter melt, disgrosse, or sell, or cause to be molten, disgrossed, or sold, any refined gold or silver to any person or persons whatsoever (other then to our agent and undertakers for our said manufacture), untill he or they shall have first entred into bond to us of one hundred pounds, or more, before our said commissioners, or any two of them, to our use, to melt none of our coines for the making of refined gold or silver, and from time to time to give a true accompt in writing of all the names, professions, and habitations of every such person and persons as shall, from time to time, buy or have any refined gold or silver of him or them, and of the true quantity and quantities of all and every such parcell and parcells as he or they shall from time to time utter, sell, or deliver. For all which said bonds so to be entered into respectively we are nevertheless pleased that no fee or allowance shalbe required or taken, nor that the same bond shalbe sent or delivered into our Exchequer, nor otherwise put in suit, but upon apparent breach thereof first appearing to our Commissioners aforesaid, or any two of them, or to our Attorney-Generall for the time being ; and that at the end of every sixe moneths the same bond respectively shalbe delivered up to the party bound, to be cancelled, if in the meane time no breach thereof shall appeare to have bin made as aforesaid, and then a new bond to be entred into by him or her respectively to the same effect, to continue likewise for another six moneths, and so for every sixe moneths, as long as this or our former proclamation shall remaine in force ; or that our pleasure shalbe further signified to the contrary. Likewise, our pleasure is that, if any of our saide loving subjects shall casually or unawares, without any wilfull or obstinate contempt, fall into the breach of any such bond, that our Chancellor of England, or Keeper of our Great Seale, for the time being, shall, upon a petition to him exhibited, and in a summary course, have power to order and moderate the same, as he in his wisdom shall thinke fitt. And also we wil and command that no gold-drawer, or other person or persons whatsoever, shal at any time hereafter, during this or our said former proclamation, draw, flat, or use any refined gold or silver, for the making of cloth of gold, or cloth of silver, without the speciall licence of two of our said commissioners, under their hands in writing first had and obtained, upon paine of forfeiture of all such gold or silver as shalbe wrought contrary to this our royall will and commandement ; and upon paine of our high indignation and displeasure, and such other paines and punishments as in like cases are usuall.

And our further will and pleasure is, and hereby wee doe give full power and authority unto our said commissioners, or any two or more of them, and to all and every such person and persons as our said commissioners, or any two or more of them, shall by warrant or writing under their hands nominate or appoint, from time to time and at all times convenient, at their pleasure, in peaceable maner (taking with them a constable or other fitt officer, and giving notice to the owner or possessor, or his or their servant or servants, of their purpose in that behalfe, to the end they may if they will accompany them), to enter into all and all manner of shoppes, cellers, work-houses, ware-houses, store-houses, or other roomes or places whatsoever, by them suspected, within



our saide realme of England or the dominions thereof, as well in cities, townes corporate, and places privileged, as elsewhere. And likewise to enter into any ship, bote, or other vessell whatsoever, riding at ancre, or otherwise abiding in any port, haven, or creeke of our said realme, and dominions thereof, for the searching and finding out of all such offences, of what nature soever, as shall be committed contrary unto this or our sayd former proclamation. And likewise to seaze and take into their hands unto our use all such gold and silver threed, and copper gold and silver threed, and gold and silver wyer imported, or that shall be imported into this our realme wrought or made, or that shall be wrought, made, drawne, or flatted within this realme, other then by our agents and undertakers, their deputies and assignes, touching the said manufacture. And further our pleasure is, that whatsoever threed wrought or unwrought, as aforesaid, or wyer, shall be so seized to our use as aforesaid, shall forthwith upon the seizure thereof be inventoried in writing, subscribed by all such persons as shall be present at any such seizure, and shall with all convenient speed be brought unto our said commissioners, now and for the time being, or any two of them, to be disposed of, as we shall thinke fit and direct from time to time. And for the better accomplishment of our service herein, we doe hereby straightly charge and command all maiors, sheriffes, justices of the peace, constables, comptrollers, searchers, waiters, and all and every other our officers, or ministers and subjects whatsoever, That they and every of them be from time to time assisting, aiding, and helping unto our said commissioners, and such as they, or any two of them, shall authorize in that behalfe, in and by all things in the due execution and performance of the premisses, according to our true meaning herein declared, as they tender our pleasure, and will answere the contrary at their utmost perils. And further, we will and declare our royall pleasure and commandement to be, that if any person or persons shall withstand or refuse to obey this our proclamation, in all or any part thereof, upon complaint and prooffe thereof had and made in that behalfe, before our commissioners, or any two or more of them, that now be or hereafter shall be for the said manufacture, or before our Attorney-Generall for the time being, that they take order to punish any such person so offending, as a contemner of our royall will and commandement, by imprisonment or otherwise, as shall and may stand with the justice of this our realme. And we further hereby declare our intent and pleasure to be, that if any agent, workeman, or other person or persons whatsoever employed by us, or our said commissioners, now or at any time hereafter, in or about the said manufacture, or anything thereunto belonging, or in or about any search to be made as aforesaid, shall in any thing falsifie the trust by us or our said commissioners committed to him or them, to the just offence or grievance of any of our loving subjects, that our eares shall be ever open to any just complaint to be made thereof: and that every person who shall wilfully or corruptly offend by colour of any authoritie or employment, given or derived from us, any way touching or concerning the said worke, shall be severely punished for the same, according to the quality of his or their offence.

Given at Roystone, the tenth day of October, in the seventeenth yeere of our reign of England, France, and Ireland, and of Scotland the three and fiftieth.

GOD SAVE THE KING!

The system thus formally authorised was rigorously carried out. Unsealed packets of thread were seized in every direction. Bonds were forced upon the



unwilling silkmen.<sup>a</sup> It was all in vain. The manufacture did not pay. The bullion which was to have been imported was not imported. The coin of the realm was melted down. On the 5th of April, 1620, a fresh patent was granted to Dyke, Bennett, and Salter,<sup>b</sup> allowing them to take the custom upon such parcels of gold and silver thread as might be imported by special license; from which it would seem that the manufacture failed to meet the demand.

If we set aside the actions of Mompesson and Michell,<sup>c</sup> in which they exceeded their powers, as not affecting Bacon in any way, we shall see that there are three points on which we should be ready to join issue with the Government in their dealing with the manufacture. We should hold that it was wrong for the Crown to draw profit from any manufacture at all; that it was wrong to grant a monopoly which covered anything more than the actual new invention, most strictly defined; and that it was wrong to take the jurisdiction over the monopoly after it was conceded from the ordinary courts, and to give it to a Royal Commission.

The question before us here, however, is not whether our modern ideas on these points are right or wrong, but whether there is reason to suppose that Bacon did not honestly come to a different conclusion from that which has since been unanimously adopted.

With respect to the first, part of the profit expected was derived from an equivalent for the customs lost by restriction of importation. The duty upon foreign gold and silver thread had been 3s. 4d. a pound, and this custom had been farmed in the early part of the reign for £200 a-year. The 3s. 4d. was now imposed upon all the gold and silver thread manufactured in England, and it was probably hoped that the sum raised would far exceed that which had been obtained by the import duty. Still, however, this would go a very little way towards the £10,000 which the King was promised as the annual profit of the manufacture. Of this, all that can be said is, that Bacon knew nothing about political economy; that he cared very much about the royal finances; and that if he saw that there were any sufficient object to be obtained, he would not think it any harm to divert the profits of a trade from the purses of a few goldsmiths to the Exchequer. For, after all, it must be remembered that it was not the poor workman who, in

<sup>a</sup> Amongst the MSS. of the House of Lords, is a list of bonds redelivered in 1624. They are thirty-two in number, dating between June 4, 1619, and October 17, 1620. The last date disposes of the usually received theory, that the release of the prisoners by the King's orders put an end to the system of taking bonds.

<sup>b</sup> Patent Rolls, 18 Jac. I. part 19.

<sup>c</sup> It is usual to speak of a patent of monopoly granted to Mompesson and Michell, which is altogether erroneous. They were, as has been seen, Commissioners, not Patentees.

his opinion, would be affected otherwise than beneficially. He was to find as much employment as he needed at the royal factories."

The second point had been decided in favour of the patentees, by Ellesmere and his fellow councillors, before Bacon had anything to do with the matter, though Bacon no doubt adopted the previous decision as his own. As far as we can make out, the facts of the case were as follows: The bulk of the gold and silver thread used in England during the first years of James's reign was imported from the Continent. Fowle and Dyke discovered the method of the foreign manufacture or learned it from others, and at great cost introduced it into England. It then appeared that a manufacture had been previously carried on by a different method, but only on a very small scale. It was by the energy of Fowle and Dyke alone that a competition with the foreign manufacturers was rendered possible, and, in consideration of this, the sole right of making the article by any method whatever was conceded to them. Experience has taught us that it is impolitic to make such wide concessions. But is it necessary to accuse of dishonesty the statesmen of all parties, including men of such different character as Ellesmere, Suffolk, and Bacon, because they held that the grant ought to be given to those who had really benefited the country by meeting foreign competition?

The last question relates to the establishment of a special commission to punish offenders. It is here that the opinion of Bacon's contemporaries was most strongly pronounced against him. If he had succeeded in carrying out his design it would have resulted in the establishment of an arbitrary power over all matters connected with trade, of which the abuses would have far exceeded the abuses of the Starchamber in the following reign. But is it the least likely that Bacon would have foreseen this? His theory of government gave large powers to the Crown, but kept those powers from being used abusively, by the constant enlightenment to be derived from frequent Parliaments. According to him, the constitutional relation between the Crown and the representatives of the people was very much the same as that which prevails in France under the second Empire. That such a theory is in the long run untenable, it is impossible to doubt. In England it never had a fair chance; James took one half of Bacon's scheme, and declined the other.

The result was that the powers, which upon Bacon's advice were exercised by the Crown, were left not merely without any serious check, but without that

<sup>a</sup> The pensions of Sir Edward and Christopher Villiers would have had very little importance in his eyes. If the profits were the King's, he might either keep them all in the Exchequer or give them away.

moral restraint which arises when the acts of officials will in no short time be discussed by an independent body.

Yet, at the present day, it is undoubtedly difficult for us to conceive how, even in an age of frequent Parliaments, Bacon can have really been in favour of placing such an ordinary matter as the making of the materials of gold lace and buttons under the care of a special commission.\* Our doubts will, I believe, find a solution in the preamble of the second proclamation. Whether it was the production of his pen is a question which I must leave to those who have given a special study to the peculiarities of his style. That it is the expression of his mature thought I, at least, have no doubt whatever. With him, as with all his contemporaries, the preservation of the coin was one of the very first necessities of the kingdom. If he could obtain security for this, he would think little of setting aside what he would consider as the narrow rules of pedantic lawyers. The Court of Exchequer might safely be entrusted with smaller matters. But it could not be trusted to take a large view of the general interests of the country.

All this is no excuse for his statesmanship. He was altogether wrong, as all his contemporaries were wrong, about the value of the coin. He was altogether wrong, when most of his contemporaries were right, about the necessity of fencing round grants of this nature with the strictest rules. The arbitrary courts which he favoured were of evil example to the commonwealth. The instruments which he employed were pushing, unscrupulous, selfish men, who did him no credit; but when we are asked to establish a charge of dishonesty against him, we must demand stronger proofs than appear to be forthcoming.

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## APPENDIX.

### FOUR LETTERS OF LORD BACON TO CHRISTIAN IV. KING OF DENMARK.

#### I.

SERENISSIME REX,—Accepi literas Majestatis Vestræ per manus prænobilis viri legati vestri Domini Sinclarii, unde maximas et humilimas gratias ago Serenitati Suæ, quod me memoriâ complecti et literis tam benignis compellare et salutare dignata sit. Ego certe (quando et de hoc ipso

\* For the opinions which Bacon was likely to hold, on the powers which might legally be entrusted to such commissions, the case against Whitelocke in the Appendix to the *Liber Famelicus*, may be profitably consulted.



quærere ex favore suo sibi placuerit) valetudine utor ad præsens ex morbo non levi recreatâ et corroboratâ, maximaque habeo solatia ex gratiâ Regis mei, sed tamen infinitis urgeor et distrahor negotiis, ut vix respirare aut vivere videor, nisi quod officia vitæ sunt mihi vitâ ipsâ longè potiora. Accedit et luctus recens ac vehemens qui subinde recurrit ex obitu serenissimæ Dominæ meæ Reginæ Annæ, ex cujus favore constanti atque uno tenore erga me semper fluente et cumulado solebam inter tantos negotiorum fluctus me reffectum et confirmatum sentire. Meum itaque erit memoriam ejus felicissimam perpetuò colere, atque debitum meum, in quo erga eam mirabiliter astrictus eram, in Serenitatam Vestram transferre, ut si quâ in re servitio suo, vel consiliis apud regem meum vel operâ<sup>a</sup> usui esse possint, omnia summâ cum alacritate et studio præstent. Rex Dominus meus convaluit firmitèr et constantèr . . . corpore [a]rtubus, atque . . . indicium certissimum . . . . internis nobilibus et vitalibus sanam esse et intactam, quod ex tam periculoso morbo tam subito et sine aliquâ recidivatione sanitatem recuperavit. Serenissimus princeps Carolus et annis et animis viget jam virilibus, summamque cum amore expectationem de se quotidie excitat. Serenissima Domina Elizabetha Palatina sobolem dabit (si Deo placuerit) in multos principatus; adde ut omnia apud nos per gratiam et misericordiam Divinam sint in statu bono et florenti; atque ex eâ ipsâ parte ex quâ maximè laborare solebamus (hoc est ex re nummariâ), tantum est perfectum per prudentiam et diligentiam Domini regis in erroribus inveteratis corrigendis, ut res suæ inde procul dubio capturæ sunt magnum incrementum et stabilimentum. Superest ut humilimè exosculer manus Majestatis Vestræ. Deum optimum maximum comprecor ut eandem prosperam et incolumem conservet.

Majestatis Vestræ omni observantiâ et devotione servus addictissimus,

Junii 16<sup>o</sup>, 1619.

FR. VERULAM, *Canc.*

## II.

SERENISSIME REX,—Cum vir generosus Robertus Amstrudder eques auratus, servus regis nostri majorem in modum et habilis et acceptus, Vestræque Majestati unicè deditus, mihi que arctâ admodum necessitudine conjunctissimus, ad Serenitatem Suam profecturus esset, officio meo me defecturum existimavi nisi literas debitâ cum humilitate et reverentiâ ad Suam Serenitatem darem; quibus et animi mei propensissimum affectum testarer, et virtutum suarum me cultorem ingenuum profiterer, et servitia mea quibuscunque in rebus usui esse possim Serenissimæ Majestati Vestræ offerrem. Cumque res jam caleant, et status Europæ ceperit esse commotior, et nova scœna ad exhibendam prudentiam regiam et virtutes heroicas jam apparata sit, Deum Optimum Maximum precor ut omnia felicem sortiantur exitum in ejus gloriam et religionis stabilimentum, et per quem effusioni sanguinis Christiani maximè parcatur, atque ut tales in eâ sint partes Regis nostri et Majestatis Vestræ quæ honores vestros, et salutem, necnon amplitudinem regnorum vestrorum maxime cumulare et illustrare possint. Superest ut humillime exosculer manus Majestatis Vestræ, eique omnia prospera perpetuò exoptem.

Majestatis Vestræ omni observantiâ et devotione servus addictissimus,

28 Mart. 1620.

FR. VERULAM, *Canc.*

<sup>a</sup> There seem to be some words omitted. The sentence is unintelligible as it stands.

## III.

SERENISSIME REX,—Accepi literas Majestatis Vestrae per manus Domini Rob. Amstrudder affinis mei, viri servitio Majestatis Suae in primis dediti; quarum nomine humilimas gratias ago Serenitati Suae, quod me honorificâ et benignâ literarum suarum compellatione indies magis obligatum velit; summâ autem afficiebar voluptate, quod in illis literis animum Serenitatis Suae pium ac vere Regium perspexerim. Cùm enim bellicâ virtute floreat, pacis tamen cultorem se profitetur; rursus sub ipsâ pacis mentione veræ Religionis patrocinium anteponit; itaque opto ut ex votis suis, quæ cum nostris sunt conjunctissima, omnia fœliciter succedant. Superest ut humilime exosculer manus Majestatis Vestrae, eique omnia prospera perpetuò comprecor.

Ex ædibus Eboracensibus.

Nov. 19, 1620.

Majestatis Vestrae omni observantiâ et devotine [*sic*] servus addictissimus,

FR. VERULAM, *Canc.*

## IV.

SERENISSIME REX,—Cum Dominus Amstrudder affinis meus, ac servitio Majestatis Vestrae apprimè deditus, iterum ad Majestatem Suam profiscatur, non potui officio meo deesse quin observantiam meam perpetuam erga Majestatem Suam literis testarer, quam non tantum calamo, sed opere et merito, prout dabitur occasio et facultas, præstare paratus sum. Dignabitur igitur Majestas sua voluntatem pro facto accipere, meque inter fidos et propensos Majestatis Suae servos reponere. Cujus manus humilime exosculor, eique omnia prospera comprecor.

Ex ædibus Eboracensibus.

Janu. 13, 1620.

Majestatis Vestrae omni observantiâ et devotione servus addictissimus,

FR: ST. ALBAN, *Can.*

The Examination of Sir THOMAS PERYENT, taken the 21st day of March, 1620.

[House of Lords MSS.]

Hee saith that one Mr. Hody gave to the Lord Chancellour a dozen of buttons to the valew of fiftie pounds, as hee thinks. And this was a fortnight or thereabouts after the suite ended, as Mr. Hody affirmed. And hee, likewise, gave to this examinee one hundred pounds, which was, likewise, after the suite ended. And this was for noe other cause but for bringing the said Mr. Hody and presenting him to the Lord Chancellour at that time to give him the said buttons.

THO. PERYENT.

The Examination of PHILLIPP HOLLMAN, taken the 22nd day of March, 1620.

[House of Lords MSS.]

The said examine saith, that being sued in Chancery by John Hull, and there being an order against him, both for his comittment, and for putting in suertie to stand to the order of that Court; and having bin prisoner three monthes, and two monthes thereof kept within the prison, as he remembers; thereupon this examinat dealt with Sir John Fynnett to use some meanes for him, who reported to this examine that hee had dealt with Mr. Mewtis, and in the end this examine contracted with Sir John Fennytt to pay 500<sup>li</sup>, and put it under his hand. But whether by the writings it were to be paid to Sir John Fennett or to Mewtis, he is not very certaine. But saith that there was never anything paid, neither had this examine any such ease as hee expected. And as this examine hath bin lately tould, by Mr. Manley, the writing is cancelled.

Hee further saith there was heretofore a cause between George Hollman, deceased, this deponent's brother, and one Thomas Young; in which cause, as the said George on his death-bedd reported to this examine, he had given 130<sup>li</sup>, which afterwards was brought backe to him by Mr. Hatcher, and said hee thought it would be his death. For that hee conceived the cause would be decreed against him, and, indeede, after his death it was decreed against this examine, contrary to faire deedes and a long possession.

Per me PHILL. HOLLMAN.

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Petition of Sir JOHN KENNEDY.

[House of Lords MSS.]

To the right honorable the Lordes spirituall and temporall, in the Upper House of Parliament assembled.

The humble peticion of Sir John Kennedy, Knight.

Humble shewinge that wheras there was a cause dependinge in the court of Chancery betwixt one David Dromond and your supp<sup>t</sup>, whoe uppon the proceedings could make nothinge appeere to bee justly dew from your supp<sup>t</sup> to the said Dromond, yett nevertheless there was a decree made that the said Dromond should be paide 200<sup>li</sup>. for a protexion out of the monyes w<sup>ch</sup> was to com to yo<sup>r</sup> supp<sup>t</sup> from Ferrers, Gosson, and Johnson. And also divers orders were made in Chancery in the favours of Tymothie Pinckney, who was yo<sup>r</sup> supp<sup>ts</sup> tennant att Barnellmes, there being no bill nor sewte dependinge betwixt the said Pinckney and yo<sup>r</sup> supp<sup>t</sup>. All w<sup>ch</sup> yo<sup>r</sup> supp<sup>t</sup> conseaveth to be unjustlie mad w<sup>th</sup> out consideracion, prooffe, or course of court, and don by reson of corruption to sume of the Lord Chancellours servants, from the injustice whereof your suppliant ought to be releevd.

Itt is therefore most humble prayed your Lordships wilbe pleased to take sune consideracion theirof, soe as your supplicant may be releevd by a review in the Chancery before sune Judges assistants, or otherwayes the matter may be determened by your Lordships medeation or sensure, and that in the meane tyme the Master of the Rolls may forbear to proceed in any of the said causes untill your Lordships pleasures be knowen. And your supplicant shall pray, &c.



XIII.—*On the Day of Cæsar's Landing in Britain : by The EARL STANHOPE,  
President.*

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Read November 15th, 1866.

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It will be in the recollection of the Society that on the appearance of the first volume of the "History of Cæsar" by the Emperor Napoleon, the Council took occasion to express to His Imperial Majesty their high esteem for the learning and ability and the power of antiquarian investigation which that work displays. The wish, which at the same time they took the liberty of stating, that we might be allowed the honor of adding His Majesty's name to our list of Fellows, received a gracious response, and we have now, as you are aware, the great gratification to see the Sovereign of France enrolled among us as a Royal Fellow.

The second volume of the "History of Cæsar," which was subsequently published, has well sustained the reputation and fulfilled the promise of the first. But the Council, while they did justice to the general merits of the eminent author, felt that there was one point on which their own researches only four years since had led them to a different conclusion. This point will be best explained if I read to you the following letter, which, with the assent of the Council, I wrote to His Grace the Duke of Somerset :—

" Society of Antiquaries, London,

" MY LORD DUKE,

" Somerset House, June 19, 1866.

" At a Council of the Society of Antiquaries held this day I was requested as President to make to your Grace the following communication :—

" The Society has not forgotten, but on the contrary holds in gratified remembrance, the prompt and obliging manner in which your Grace responded to the appeal which I addressed to you in its name on the 18th of March, 1862, and the interesting experiments which were in consequence made under your direction with respect to the course of the Dover tides.

“ Those experiments seemed to be decisive of the question of Cæsar's landing, and to fix the place at or near Hythe. But the controversy has now been reopened by the Emperor Napoleon in the second volume of his “ *Life of Cæsar*,” where the honour of this place of landing is claimed for Walmer or Deal.

“ In taking this view His Imperial Majesty relies, in the first place, on a difference of date. Cæsar has mentioned a full moon, which we know by calculation to have occurred in the night of the 30th of August (or, to speak quite strictly, at 3 A.M. August 31, B.C. 55), and he says that this was *post diem quartum* of his landing. Now, the Emperor, interpreting this Latin phrase in a different sense from that understood by Mr. Lewin and the Astronomer Royal, and also by M. de Saulcy, Member of the Institute, an extract from whose work was appended to my letter of March 18th, 1862, conceives these words of Cæsar to exclude both the day of the voyage and the day of the full moon, so that Cæsar would have landed in Britain on the 25th, while the previous authorities make it the 27th, of August. The question then is, whether, assuming, for the sake of argument, the date as preferred by His Majesty for the time of landing, it need also, if assumed, imply a difference as to the place; and it is on this point that the Society of Antiquaries desires once more to recur to the enlightenment of nautical science.

“ The Emperor, who we observe quotes as his authority “ *L'Annuaire des Marées des Côtes de France pour l'année 1857*,” asserts that in the afternoon of the 25th of August, that is on the sixth day before the full moon, the tidal current off Dover would have borne Cæsar's fleet from west to east, that is, in the direction of Deal.

“ On the other hand, we learn from the experiments which the authorities of the Admiralty were so good as to undertake at our request, that on the afternoon of the 27th, that is, on the fourth day before the full moon, the tidal current off Dover would have borne Cæsar's fleet from east to west, that is, in the direction of Hythe.

“ Our object, then, in now applying to your Grace is to consult, by your permission, the heads of the Hydrographical Department of the Admiralty, and to ascertain from them whether it be correct according to the calculations in their hands that the interval of two days does really invert the channel tides, so that the current running (as that department has already informed us) east to west on the 27th would have run west to east at the same hour on the 25th.

“ I have the honour to be, My Lord Duke,

“ Your Grace's very obedient servant,

“ STANHOPE.”

At the time when the Duke of Somerset received this letter, he and his colleagues in the Government had in view their speedy retirement from office. But this consideration did not render the Duke at all remiss in his attention to our wishes. So far from it that, within a very few days, I received from him an answer as follows, in a private form :—

“ Admiralty, Monday 25th June, 1866.

“ MY DEAR LORD STANHOPE,

“ I send you a note by the Hydrographer, on the vexed question of Cæsar's landing.

“ Yours faithfully,

“ SOMERSET.”

*Note appended.*

“ It is correctly stated at page 39 of Lewin's ‘ Conquest of Britain,’ that at 3 P.M. of 27th August, B.C. 55, the current was running to the westward, and would continue to do so until 6.30 P.M.

“ Substituting the 25th August for the 27th at the same hour of 3 P.M., the current would be still running to the westward, but would only continue to do so until 4 P.M.

“ Therefore if Cæsar weighed from off Dover at 3 P.M. of the 25th of August, he would have done so under the same conditions of tide as regards direction, but he would only have had one hour's duration of westerly stream instead of three and a half hours.

“ GEORGE HENRY RICHARDS,

“ June 22, 1866.

“ Hydrographer.”

It will be seen from this official computation that, if even we were to grant to the Emperor that the day of Cæsar's landing was the 25th of August, instead of the 27th, the conclusion of His Majesty would not even in that case be sustained. Cæsar nowhere says that he had the tide in his favour all the time that he steered from Dover, but only that the tide was in his favour at the outset. “ Ventum et æstum uno tempore nactus secundum.” If then he sailed at 3 in the afternoon on the 25th, he would have found the tide running westward then, and for one hour subsequently. Add to this, that one hour's sailing with the aid of wind and tide would be sufficient to bring him to the point at which he actually landed, and which as he states was distant from Dover about eight miles.

But the further question here arises—how far is the theory admissible that the



voyage of Cæsar from Dover to his point of disembarkation was made on the 25th of August, instead of the 27th? The answer to this question must depend entirely upon the meaning which we may assign to the phrase "*post diem quartum*." Does this phrase, as Mr. Lewin and others have argued, include the two extremes? Or does it rather, as the Emperor contends, exclude them?

Mr. Lewin, in support of his own interpretation, had already, some time since, adduced a passage of considerable cogency. It is derived from the Second Philippic of Cicero, ch. 35:—"Neque te illo die neque postero vidi . . . . Post diem tertium veni." There is a recent commentary on this reference from the pen of the Rev. C. Merivale, the excellent historian of the early Cæsars. "The passage of Cicero," he says, "taken with the context, is amply sufficient to show that the phrase may be inclusive. But can it be otherwise? Does there ever occur an instance where it is exclusive?" Mr. Merivale goes on to observe that it may be difficult to prove the negative, but he does not conceal his own strong belief that the affirmative to this inquiry cannot be sustained.

The words of Mr. Merivale which I have just now quoted are derived from an article contributed by him with his name to a recent periodical, the "*Contemporary Review*" of September last. In that article he has anticipated—and much more than anticipated—the remarks upon the point in question which I might have desired to address to you. With great learning and no less great acuteness he has adduced several instances, besides that from the second Philippic, in support of his position. First, there is another passage from Cicero, in the Oration for Milo, ch. 16—"Audistis Clodium sibi dixisse . . . . peritulum Milonem triduo: post diem tertium gesta res est," that is, within three days.

Next, there are some words from the first chapter of the sixth book of Livy—"Quidam quod postridie Idus Quintiles non litasset Sulpicius . . . . neque post diem tertium objectus hosti exercitus Romanus esset;" that is, neither the day after the Ides nor the next day after that; consequently the third day inclusive.

Then again, Quintus Curtius says in his third book, ch. 6—"Post diem tertium medicamentum sumpturus erat. . . . Inter has cogitationes biduo absumpto illuxit a medico destinatus dies;" that is, the third day.

Hirtius, also, in his account of the African war, and near the commencement, tells us first of the orders that Cæsar gave—"Datis mandatis ipse navem conscendit a. d. vi. Kal. Jan." (that is the 27th December) "et reliquas naves statim est consecutus. Ita vento certo celerique navigio vectus post diem quartum cum longis paucis navibus in conspectum Africæ venit." This same day he landed and summoned Adrumetum to surrender: "unâ nocte et die ad oppidum consumptâ"

—then he withdraws from the siege—“itaque castra posuit ad oppidum Ruspina Kal. Januariis.”—That is, on the 1st of January he arrived before Ruspina: on the 31st of December he lay before Adrumetum; therefore it was on the 30th that he had landed there; and this was “post diem quartum” from his sailing on the 27th of December.

But Mr. Merivale has properly reserved to the last his strongest instance—much his strongest, since it is derived from Cæsar himself. He bids us refer to another passage in the “De Bello Gallico,” the 6th book and the 33rd section. There we are told of Cæsar, “Discedens post diem septimum sese reversurum confirmat;” and then after some interval there comes, “Diesque appetebat septimus, quem ad diem Cæsar . . . reverti constituerat,” which last words, as Mr. Merivale observes, may be thus translated: “Meanwhile the seventh day, the period fixed for Cæsar’s return, approached.” And it is added by Mr. Merivale that the Emperor Napoleon in the corresponding passage of his own second volume adopts this mode of translation as the true one without objection or remark.

The citations which the industry of Mr. Merivale has thus collected seem to me I must say of almost irresistible force. But, further still, I would ask you to consider the meaning which we attach to two phrases derived from Latin originals, but still in common use among ourselves; I allude to the phrases of a tertian ague and a quartan ague. Now a tertian ague is where the attack occurs every other day, a quartan ague is where there are two days interval between. In both these cases, therefore, the third and fourth day are counted as inclusive.

Moreover I would venture to ask whether, in other instances, the same mode of computation as derived from the Latin does not prevail among the French themselves? When they say “dans huit jours” or “la huitaine” do they not invariably mean a week; and have they any other term to express a fortnight beyond this, “quinze jours” or “une quinzaine?”

Notwithstanding therefore the respect which we justly owe to the Emperor Napoleon’s critical sagacity, of which he has given us many other tokens, and notwithstanding also the weight which belongs to other excellent scholars in France whom the Emperor had the opportunity of consulting, we may, I think, justly incline to the opinion of Mr. Lewin and Mr. Merivale, that the weight of classical authority is against the conclusion which on this point his Majesty has endeavoured to establish. But the elucidation of the truth is of course our only object, as it is with the Emperor also; and we should most readily own ourselves mistaken if other and stronger instances, tending to a different conclusion, can be at any time adduced.















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